

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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CONTINUED PUBLIC MEETING

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THURSDAY
MAY 13, 2004

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The Regular Meeting of the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of the Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C. 20001, Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
KEVIN HILDEBRAND	Member
GREGORY JEFFRIES	Member

OFFICE OF ZONING STAFF PRESENT:

ALBERTO P. BASTIDA	Secretary
SHARON SCHELLIN	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

ELLEN McCARTHY	Deputy Director
JOHN FONDERSMITH	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

MARY NAGELHOUT, ESQ.

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P-R-O-C-E-E-D-I-N-G-S

6:37 p.m.

CHAIRPERSON MITTEN: Good evening,
ladies and gentlemen. This is a public hearing of
the Zoning Commission of the District of Columbia
for Thursday, May 13, 2004.

My name is Carol Mitten and joining me
this evening are Vice-Chairman Anthony Hood and
Commissioners Kevin Hildebrand and Greg Jeffries.

The subject of this evening's hearing is
Case No. 02-26. This is a request by the George
Washington University for special exception relief
pursuant to Sections 210 and 3104 of the Zoning
Regulations 11DCMR for further processing under an
existing campus plan to amend the Board of Zoning
Adjustment's March 31, 1998 Order No. 16276.

Testimony and evidence submitted at this
evening's hearing will be confined to the
submissions requested by the Zoning Commission on
February 19, 2004. Notice of today's hearing was
published in the D.C. Register on March 19, 2004.
Copies of the hearing announcement are available to
you and are located in the wall bin near the door.

Please be advised that this proceeding
is being recorded by a court reporter and is also

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1 being webcast live. Accordingly, we must ask you to
2 refrain from making any disruptive noises or actions
3 in the hearing room.

4 When presenting information to the
5 Commission, please turn on and speak into the
6 microphone on the table in front of us, first
7 stating your name and home address. When you are
8 finished speaking, please turn your microphone off
9 so that your microphone is no longer picking up
10 sound or background noise.

11 This hearing will be conducted in
12 accordance with the provisions of 11 DCMR Section
13 3104, which are the Rules of Procedure for Special
14 Exceptions. The order of procedure will be as
15 follows.

16 Preliminary matters followed by the
17 presentation of the Applicant's case, report by the
18 Office of Planning, reports of any other Government
19 agencies, report by the affected Advisory
20 Neighborhood Commission, in this case it's ANC 2-A,
21 persons in support, persons in opposition, rebuttal
22 by the Applicant.

23 The following time constraints will be
24 maintained in this hearing. The Applicant will have
25 as many as 30 minutes, but don't feel compelled to

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1 take that long. Organizations will have five
2 minutes. Individuals will have three minutes.

3 The Commission intends to adhere to
4 these time limits as strictly as possible in order
5 to hear the case in a reasonable period of time.
6 The Commission reserves the right to change the time
7 limits for presentations if necessary and notes that
8 no time shall be ceded.

9 All persons appearing before the
10 Commission are to fill out two witness cards. These
11 cards on the table near the door. Upon coming
12 forward to speak to the Commission, please give both
13 cards to the reporter who is sitting to our right.

14 The decision of the Commission in this
15 case must be based exclusively on the public record.
16 To avoid any appearance to the contrary, the
17 Commission requests that persons present not engage
18 the members of the Commission in conversation during
19 a recess or at any other time. Staff will be
20 available throughout the hearing to discuss
21 procedural questions and you can direct those to Mr.
22 Bastida or Ms. Schellin.

23 Please turn off all beepers and cell
24 phones at this time so as not to disrupt these
25 proceedings.

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1 At this time the Commission will
2 consider any preliminary matters. Mr. Bastida,
3 anything?

4 MR. BASTIDA: The staff has no
5 preliminary matters, Madam Chairman.

6 CHAIRPERSON MITTEN: Mr. Moore,
7 anything?

8 MR. MOORE: (No audible response.)

9 CHAIRPERSON MITTEN: All right. Anyone
10 else?

11 (No audible response.)

12 CHAIRPERSON MITTEN: Very good. Would
13 all individuals wishing to testify this evening now
14 rise to take the oath? And, Mrs. Schellin, if you
15 would administer the oath?

16 (The witnesses were sworn.)

17 CHAIRPERSON MITTEN: Mr. Moore, whenever
18 you'd like to begin.

19 MR. MOORE: Thank you. Good evening,
20 Madam Chairperson and members of the Commission.
21 I'm Jerry Moore of the Law Firm of Venable appearing
22 this evening as counsel to the George Washington
23 University in application No. 02-26, which requests
24 special exception relief under an existing campus
25 plan to amend the conditions set forth in the

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1 Board's 1998 order restricting the classes of users
2 at the Lerner Health and Wellness Center and to
3 allow that same center to remain open until 1:00
4 a.m. on all days.

5 This case evolves from an order dated
6 March 31, 1998 in which the Board of Zoning
7 Adjustment unanimously approved the university's
8 application to construct and use the Lerner Health
9 and Wellness Center.

10 In making that application, the
11 university clearly stated and the Board noted its
12 order that the purpose of the center was to serve
13 the recreational and fitness needs of the university
14 population, including special memberships to the
15 immediate neighbors of the university community and
16 a summer membership program to other. The Board
17 stated in its findings of fact that the university
18 presented evidence and expert testimony to support
19 its contention that the approval of that application
20 will not have an adverse impact on neighboring
21 property because of traffic, especially since most
22 of the users will come from the existing campus
23 population.

24 The D.C. Office of Planning offered
25 evidence and testimony supporting its recommendation

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1 that the application be granted stating that such
2 would be consistent with the approved campus plan,
3 not result in an increase in the number of students,
4 faculty or staff and would not impair the intent,
5 purpose and integrity of the zoning regulations.

6 This recommendation of approval arose
7 directly from the university's unequivocal
8 statements that the facility was intended for the
9 use of the university community. The Office of
10 Planning report did not recommend the imposition of
11 any conditions.

12 Crediting this evidence of record, the
13 Board granted the application. However, in so doing
14 the Board found that the purpose of the facility is
15 not to provide athletic uses for neighbors, alumni
16 or anyone else who is not a student, faculty or
17 staff person of the Foggy Bottom campus.

18 Well, after a year of experience in
19 operating the center, the university filed this
20 application asking the to Zoning Commission to free
21 it from what in practice has proven to be an
22 unreasonable imposition on operating rather than
23 land use policies by placing restrictions on the
24 persons, defined solely by class, who are permitted
25 to participate in the programs offered by the

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1 center.

2 Since the center opened, the university
3 has been carefully studying who uses the facility,
4 at what times, how many there are and the means by
5 which they arrive. As a consequence, substantial
6 evidence, much of it compiled by experts, has been
7 placed into the record to justify the legitimate
8 zoning-related problems. And to date, there has
9 been no evidence that would support a contrary
10 conclusion. Oh, there are a few respectful few who
11 thing that the university's request is a bad idea,
12 but not one of them has submitted any objective
13 zoning-related facts that would justify their
14 negative conclusions.

15 This application first sought approval
16 of up to 3,000 more members without regard to class.
17 However, the university responded to a Commission
18 request and categorized and prioritized the new
19 members that were proposed by class in a submission
20 filed in March of 2003.

21 Also requested in this application is
22 permission to extend the closing hour from 10:00
23 p.m. Monday through Saturday and 8:30 on Sunday to
24 1:00 a.m. on all days except Saturday. There is
25 substantial expert evidence already in the record to

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1 demonstrate that those adjustments will not become
2 objectionable to neighboring property because of
3 noise, traffic, number of students or other
4 conditions. That is the unrebutted conclusion of
5 Grove Slade, the university's traffic consultant.
6 The firm of Brailsford & Dunleavy, experts in the
7 field of facilities planning, agreed by written
8 report and by all testimony in the record.

9 By memorandum dated November 25, 2002,
10 the Office of Planning recommended that the
11 Commission approve the university's request to
12 expand the center's membership by 3,000, but
13 suggested that the closing hour be extended only to
14 11:30 p.m. on all days. The District Department of
15 Transportation concurred with OP's recommendations.
16 Ten neighborhood residents including an ANC
17 Commissioner for this area and the president of the
18 Remington Condominium Association appeared at the
19 hearing to testify in support of extending the class
20 of members by 3,000 and adjusting the closing hour.

21 Letters of support from Saint Mary's
22 Court and Saint Mary's Episcopal Church are in the
23 record. The School Without Walls also testified in
24 support of the application. All of this evidence
25 was submitted in support of 3,000 new members from

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1 the university and neighboring communities.

2 After the hearing, the university
3 revised its request downward to extend membership to
4 persons identified by class for convenience and
5 traffic analysis to extend the closing hour to 1:00
6 a.m. on all days. These revisions have been briefed
7 in the record by the university and reviewed by the
8 Office of Planning and the District Department of
9 Transportation. It is these revisions that are the
10 subject of this second public hearing this evening.

11 As most of the case is already in the
12 record and because the Commission has specifically
13 limited the scope of the hearing, we have endeavored
14 to organize our presenters in a logical and
15 efficient manner.

16 First, will present Charles Barber, who
17 you know, who will detail exactly whom the
18 university wishes to offer membership to and the
19 reasons supporting the university's revised downward
20 request. He will also justify the later closing
21 hour that is requested.

22 Tony Vecchione, the university's
23 assistant athletic director, will speak to the
24 purposes of the center, the current usage patterns
25 and how the center is managed.

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1 Finally, the Commission is familiar with
2 Nicole White of Grove Slate Associates who has
3 undertaken a supplemental traffic, parking and
4 transportation analysis of the area in the context
5 of the revised numbers. Ms. White has qualified by
6 the Commission in this case as an expert witness in
7 the field of traffic and parking analysis. The
8 professional report of Ms. White is in the record,
9 so her purpose this evening will be to highlight its
10 findings and conclusions and to respond to what we
11 feel are some unsubstantiated and erroneous
12 conclusions made in this case by the Office of
13 Planning in its latest report and to answer any
14 questions that the Commission may have.

15 We trust that you will find our evidence
16 to be substantial, efficiently presented and
17 persuasive.

18 First, with your leave, I'll call on Mr.
19 Barber to testify.

20 MR. BARBER: Thank you. Good evening.
21 We view the nature of the facility as primarily to
22 serve the university population, but also to serve a
23 broader population. Like these types of facilities
24 operate by colleges and universities around the
25 country, we see this health and wellness facility as

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1 an opportunity to make outreach efforts to the local
2 community, as well as to supporters of the
3 university and we think we can operate it as such in
4 a way that does not cause any adverse impact on the
5 surrounding community.

6 Let me go over the categories of users,
7 but I want to emphasize, we're talking about a total
8 of about 1,300 additional potential new members, not
9 -- we know all these going to use the facility, but
10 that is the universe we're talking about, downward
11 from 3,000.

12 The first category is immediate
13 neighbors. These are the residents of the
14 Remington, Saint Mary's Court, as well as users of
15 the Saint Mary's Church and the Oddfellows. There
16 are two reasons for this group. One, we went to
17 these people when we wanted to build this building
18 in 1998 and their first question was, "All right.
19 We'll support you if we're allowed to use the
20 facility," and we said, "Fine." We've never been
21 able to make good on that commitment because of the
22 restriction to student, faculty and staff of the
23 Foggy Bottom campus and so we want to make good on
24 that commitment. The second reason to allow this
25 group access is if there were any adverse impact,

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1 and we don't think there is any evidence, or there
2 will be any adverse impact on the surrounding
3 community, but these people will be the ones
4 impacted the most if there were any and so we think
5 it's logical to include them. And we have numbers,
6 Remington and Saint Mary's Court have expressed the
7 most interest, 50, and Saint Mary's Church and the
8 Oddfellows are smaller populations. The total of
9 that group is about 122.

10 Mount Vernon campus. GW operates a
11 separate campus on Mount Vernon. There are 445 beds
12 on the Mount Vernon campus and 85 faculty and staff.
13 We have a shuttle that goes back from Mount Vernon
14 to Foggy Bottom that operates regularly. Every 10
15 minutes there's a shuttle running back and forth
16 from 7:00 a.m. to 7:00 p.m. and it's now operating
17 on a 24-hour basis. It's a very efficient system.
18 It's well utilized. In April alone there was some
19 68,000 riders. We put a lot of effort into having
20 this system work efficiently and it stops one block
21 from the health and wellness center. So we don't
22 think there will be any problem about allowing Mount
23 Vernon campus people access to this facility.

24 The third group I want to address is the
25 School Without Walls. School Without Walls, some of

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1 you know it, the grant school, District-owned
2 property surrounded by GW property about a block
3 from the campus. We have long had a relationship
4 with the School Without Walls. Some of their
5 students take classes for free at GW. Some of their
6 faculty members take classes. We allow them access
7 to our library and some other services.

8 We are in discussions with the School
9 Without Walls on a broader relationship that could
10 result in a renovated or new building for the School
11 Without Walls and an expanded relationship between
12 the entities. We may come back to you at a later
13 date on an application to address that particular
14 issue.

15 But for this issue, what we want to
16 allow is for the possibility for the School Without
17 Walls students, faculty and staff to use the
18 facility if we're able to reach this broader
19 agreement. Again, we don't have that agreement now,
20 but we're looking down the road and when they look
21 at their facilities and want a new or renovated
22 facility, they don't want to have to use valuable
23 academic space for a gymnasium when a block and a
24 half away there is a recreational facility which
25 we're willing to give them access to on an organized

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1 basis. We would never have high school students
2 just have free access to a building that has college
3 students. But we think there's an opportunity for a
4 program to give access to the School Without Walls
5 and so we want to provide for that.

6 The President's Club. This is an issue
7 that's been given some attention. Let me give it
8 some scope. There are 270 lockers in the health and
9 wellness club for the President's Club and the
10 President's Club will pay a higher fee. They get
11 certain amenities. Twenty-five people use that now.
12 That is 25 people are members of faculty and staff
13 who wanted to pay the higher fee for the President's
14 Club. There are another 100 members of the
15 President's Club who are still at the Smith Center.
16 That's the last piece of recreational use of the
17 Smith Center. The Smith Center has been
18 transitioning into inter-collegiate athletics and so
19 our inter-collegiate athletic teams, our teams,
20 visiting teams now use the Smith Center and the
21 locker rooms and the equipment and all that has been
22 geared towards them. But there are 100 people of
23 the President's Club who still use the Smith Center.
24 If this application is approved, they will
25 transition over to the health and wellness center.

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1 They're already in the area, so these are not new
2 people. So we're looking at a total of 145
3 potential new people to use the health and wellness
4 center in the category of the President's Club.

5 Now, who are these people? Well, for
6 starters, they're members of our Board of Trustees.
7 We have 44 members of our Board of Trustees and not
8 one of them can use this health and wellness center.
9 There's something wrong with that. There would be
10 other supporters of the university, potential donors
11 and this is the kind of thing I was talking about,
12 and Brailsford & Dunleavy spoke to during the first
13 hearing. This is the kind of thing that a
14 university uses is facility for, to cultivate that
15 relationship because it benefits the university
16 because they support the university financially and
17 otherwise and then that benefits the broader
18 community. If we get more support, we can keep our
19 tuition down, we can offer more D.C. scholarships,
20 we can provide more services to the community. It
21 benefits everyone.

22 You will hear from the traffic expert
23 that the traffic impact of these 145 new members is
24 no significant. And that's based upon surveys and
25 data that they collected. So we think this is an

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1 appropriate category to include.

2 And the final category is guests of
3 members. This is a small group. It's about 25
4 during the week and we figure it will be bigger on
5 the weekends when there's less of an impact, quite
6 frankly, on the weekends, so it could go up to 50 on
7 the weekend. Why are we including this group? I'm
8 mindful of that letter that we submitted in the
9 record the first time around. This is not a letter
10 we solicited. This letter came from a parent that
11 was addressed to the president of the university and
12 he had come down, this father had come down to visit
13 his son who is attending George Washington
14 University and he was so looking forward to spending
15 time with his son playing racquetball and this was
16 an opportunity to bond with him and to spend some
17 quality time with him and he was really looking
18 forward to this visiting weekend. And when he
19 showed up with his son, we had to tell him, "You
20 can't use this facility. We'd like to, but you're
21 not in the categories of permitted users." We
22 should have some way to allow for that intermittent
23 use of people who are associated with current users
24 and that's the idea of the guest policy. Again, we
25 tried to keep those numbers small so we don't think

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1 it would have an objectionable impact in terms of
2 parking or traffic.

3 Let me move to hours of operation. We
4 have proposed that the closing hour be moved to
5 1:00. That may strike you as late, but there are
6 two reasons for that. One, this is what our
7 students want. If anyone has a teenager, you know
8 they're up at that time of the night. Now, are they
9 studying? Yes, they are studying. Are they
10 sleeping? Some are sleeping. But at times, they're
11 also looking for activities, things to do with their
12 energy. This is a good thing to do with their
13 energy. They want to be able to go at 12:00 at
14 night for a pick up game of basketball and why
15 shouldn't they? That's where they should be if
16 they're not in the library. And so we're responding
17 to that request to allow greater access at later
18 hours.

19 The second reason is that if we open the
20 facility up to later hours, it flattens out the
21 usage curve and allows the university to manage the
22 facility to allow room for these other members. You
23 will hear a proposal tonight that the university
24 does not object to. There is a proposal from some
25 members in the community that says, "In addition to

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1 the immediate neighbors, we should allow space for
2 another 100 members who are residents of Foggy
3 Bottom West End who do not live adjacent to the
4 facility, but are still residents of Foggy Bottom
5 West End." So they don't present any traffic
6 problems. We don't have any objection to that.
7 But, that population as well as the other non-
8 university population, as modest as it is, will be
9 better managed if we can have longer hours.

10 So there are two reasons for the longer
11 hours, to meet the requests and desires for students
12 who stay up late, as well as to flatten out the
13 curve and so as to allow greater usage of this
14 valuable facility.

15 There's been raised the issue well,
16 won't there be some disruption of students leaving
17 at 1:00 in the morning? There has never been a
18 complaint that we have received of any noise of
19 students leaving the health and wellness center and
20 if we would have gotten one, it would have come from
21 the people who are supporting this application, the
22 Remington and Saint Mary's Court. We have a letter
23 from the Remington, the property manager, which
24 reiterates the position they took in the first
25 hearing. That letter will be coming for the record.

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1 I won't take the time to read it, but they support
2 the application.

3 When students leave the health and
4 wellness center, basically they're tired. They want
5 to go home. So there's really no reason for a lot
6 of disruption. If there were and if we did receive
7 complaints, the university has the university police
8 department and we would station police or have
9 patrol cars passing about that time to make sure
10 that there wasn't, you know, any untoward problems.

11 Finally, the issue that was requested we
12 address was compliance with the campus plan
13 conditions. We have submitted a status report in
14 our March 11 filing that goes down the conditions
15 condition-by-condition and gives a status and we
16 believe we are in substantial compliance with those
17 conditions. If there are any questions on those,
18 I'd be happy to answer them. Thank you.

19 CHAIRPERSON MITTEN: Thank you.

20 MR. MOORE: Thank you, Mr. Barber. With
21 your leave, Madam Chair, I'll just move right along
22 with our witnesses and I'll present all my witnesses
23 for questions.

24 CHAIRPERSON MITTEN: Please.

25 MR. MOORE: Next I'll call Nicole White

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1 please.

2 MS. WHITE: Good evening, Madam Chair,
3 and members of the Zoning Commission. My name is
4 Nicole White and I'm a senior associate with Grove
5 Slade Associates.

6 First, let me refresh everyone's memory
7 that we prepared a traffic and parking study back in
8 November of 2002 that looked at traffic and parking
9 impacts with the 3,000 additional health and
10 wellness center members. At that time, we looked at
11 university activity data on a weekly and a daily
12 basis. We conducted mode choice surveys and we did
13 all of this analysis and we were able to conclude
14 that with the 3,000 new members that this would not
15 have an adverse impact on traffic or parking. So
16 recently the university came forth and said, "We'll
17 reduce this number," so obviously we can still
18 conclude that there would be no adverse impact to
19 traffic and parking.

20 I just wanted to highlight a couple of
21 things from my surveys that Mr. Barber and Mr. Moore
22 have already touched upon. That is, when we
23 conducted our survey back in 2002, we found that
24 only 10 percent of people who used the health and
25 wellness center drive to the health and wellness

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1 center. The remaining 90 percent walk or arrive by
2 transit. Also, we found that only 18 percent of
3 people that use the President's Club at the Smith
4 Center drive and the rest of them walk or use
5 transit. Another important percentage to throw out
6 at you is that on any given day only 13 percent of
7 the total health and wellness center membership uses
8 the health and wellness center. So what that says
9 is what we all know, is people who have gym
10 memberships do not go to the gym every day. I think
11 we all know that. I can attest to that.

12 So, we looked at the five user
13 categories. Most of them are within the immediate
14 residential area and then we have the President's
15 Club, which I already said that only 18 percent of
16 them would drive. Only 30 percent of them will be
17 there at any one time. And so from that, we know
18 that only a small amount of additional traffic will
19 be generated by this use. So we were able to
20 conclude with confidence that this would not have
21 any adverse impact due to traffic and parking.

22 I just want to touch on one thing and
23 reiterate the importance of the Mount Vernon
24 shuttle. Charles talked about 68,000 users in the
25 month of March. They've had close to 500,000 users

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1 per year in the past two years. Also, the
2 importance of the frequent shuttle runs, 15-minute
3 and 20-minute increments, helps to contribute to
4 that 500,000 per year usage. I think that's it.

5 Finally, I did want to also let you know
6 that DDOT has supported this application and they
7 agree that it will have no adverse impact on traffic
8 and parking.

9 CHAIRPERSON MITTEN: Thank you.

10 MR. MOORE: Thank you, Ms. White. Next
11 I'll call Tony Vecchione.

12 Mr. Vecchione, would you identify
13 yourself for the record please?

14 MR. VECCHIONE: Hi, my name is Tony
15 Vecchione. I'm the assistant athletic director for
16 facilities and operations and I have the oversight
17 for the Lerner Health and Wellness Center and the
18 Smith Center for the operation of those buildings.

19 And basically, I just wanted to touch
20 base a little bit on the usage patterns or the usage
21 pattern of the Lerner Health and Wellness Center.

22 The building peak hours that we found,
23 and from the studies, have been Monday through
24 Wednesday from 6:00 to 8:00 p.m. Those are the most
25 heavily used time periods. The other days, the

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1 weekends and the summers are a lot lighter.

2 The late hours are extremely important
3 to our students' lifestyle. Believe it or not, they
4 really do work out at that time at night and they
5 prefer that rather than early in the morning the way
6 some of our staff do, the 6:00 a.m. or the 7:00 a.m.
7 time. And also, our intramural participation is a
8 lot heavier after 6:00 p.m. and they'd rather go as
9 late as we can let them and the hours actually limit
10 the amount of teams and the people that are able to
11 participate. So again, the late hour is very
12 important to our student lifestyle.

13 The center is basically managed with an
14 ID system and we use our G World ID system, which is
15 a magnetic strip reader-type of situation. Because
16 of that magnetic reader, it allows us to be able to
17 count the number of people that use the facility,
18 the different populations, how many times people use
19 the facility, as well as we're able to supply
20 reports to that fact and how people use it and how
21 many people use it and those type of things.

22 There is one access point, which is the
23 main lobby off of G Street. We do have the
24 opportunity or the ability to have a second access
25 point, which is off the garden in the back. We do

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1 not use that, but we can use that and we could do
2 the same type of magnetic strip reader situation so
3 we can always count and monitor the people that are
4 using the facility.

5 Crowd control. When we talk about crowd
6 control of the facility, we talk about moving people
7 when it gets crowded or it starts to have a heavy
8 use. We have over 700 pieces of cardio and weight
9 equipment in the building. We have one main area
10 with the cardio and weight equipment on the main
11 floor, but we have three other floors in the
12 building that have pieces of cardio equipment on it.
13 When the facility starts to get heavily used in that
14 one area, we have graduate students and we have
15 part-time staff that actually are able to move the
16 people to other areas and recommend to them that,
17 you know, there's equipment on other floors of the
18 building that are not being used and they should
19 move to those areas, as well as we have a sign-up
20 list that they can use on the main floor so that
21 they can, you know, be able to use the equipment so
22 they're not all backed up and not all backlogged.

23 Also, what we found is that people learn
24 how to use the building. When it's crowded, they
25 don't come at that time to use the building and

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1 people will find their only little niche on when
2 it's best for them to be able to use it, which kind
3 of helps to balance it out.

4 We have not had any problems with noise.
5 We have not had any problem with numbers of students
6 or traffic. We haven't had any problems with people
7 congregating outside the building. When we close,
8 they do leave. They just go from there.

9 And the only other thing I wanted to say
10 was that we really want to be able to or we really
11 would like to be able to service the university
12 community. We have not had that opportunity yet and
13 our recreation department which runs our wellness
14 department has a lot of classes and a lot of
15 programs they run and would really like to share
16 that with the university community and especially or
17 surrounding local neighbors. I think that's it.

18 CHAIRPERSON MITTEN: Thank you.

19 MR. MOORE: Ms. Mitten, those are my
20 witnesses for this specialized hearing this evening.
21 I'll present each of them at once for questions from
22 the Commission.

23 CHAIRPERSON MITTEN: Okay. Thank you.
24 Any questions? Mr. Hildebrand?

25 COMMISSIONER HILDEBRAND: Actually, I do

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1 have a question. In your evaluation of how the
2 facility is used, and perhaps this is best for the
3 athletic director, have you taken a forward looking
4 view to when the new dormitories come on line and
5 what your projected population will be two years
6 from now as opposed to last year?

7 MR. VECCHIONE: We have. We've taken
8 that into consideration and we can more than handle
9 the number of students that would be able to use the
10 space.

11 COMMISSIONER HILDEBRAND: Can you
12 provide us diagrams of what you're projecting as the
13 future use like you've given us for the current use?

14 MR. BARBER: Yes, we can give you our
15 best guesstimates on that. And let me respond, we
16 took that into consideration and downsizing the
17 request from 3,000 to 1,300. We realized that
18 consistent with the direction give us by the BZA to
19 increase on-campus housing that we would have more
20 students on campus. So in a general fashion we took
21 that into consideration, but if you want us to make
22 a projection of numbers going forward, we can
23 provide you with something.

24 MR. MOORE: I might add, Mr. Hildebrand,
25 that because these dormitories are located nearby, I

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1 think it's fair to assume that they would be
2 walking, so as not to cause a traffic impact of any
3 kind.

4 COMMISSIONER HILDEBRAND: Yes. No, I'm
5 aware of that.

6 CHAIRPERSON MITTEN: Anyone else,
7 questions? Mr. Hood?

8 VICE-CHAIR HOOD: Mr. Barber, I'm just
9 curious, your Board of Trustees, how did they become
10 excluded? Was there ever a pitch to try to get them
11 involved early on, or how did that even happen?

12 MR. BARBER: Well, the university came
13 in with no limitations on users. I mean, we thought
14 we could manage this facility in a way that included
15 the population we thought who should have access and
16 that's how we presented our case. At the end of the
17 case, this is the 1998 case, we were a little bit
18 surprised when the condition came down that it would
19 be restricted to students, faculty and staff for the
20 Foggy Bottom campus. We really didn't think there
21 wa a lot of testimony. It was roughly based upon
22 traffic impact, but there wasn't a lot of testimony
23 on that. So, that's how it happened. And our
24 trustees are neither students, facility, nor staff.
25 So I don't think it was thought through. I think it

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1 was just a kind of byproduct of that condition.

2 MR. MOORE: Let me add to that.

3 VICE-CHAIR HOOD: Sure. Please.

4 MR. MOORE: Because I handled that case.
5 This case was brought in 1998 to build and construct
6 the center and as has become regular with university
7 applications, there were a number of people in the
8 audience who didn't think that constructing the
9 health and wellness center was a very good idea.

10 The university put forth in that case
11 what I believe to be substantial evidence that the
12 purposes of the center would be to serve the entire
13 university community. The Office of Planning
14 submitted a report which agreed with that and
15 recommended that the BZA at the time approve that
16 application in full as submitted. At the end of the
17 day, however, I think, at the public meeting, BZA
18 reached a compromise and they decided to permit the
19 university to build the center and to open the
20 center, but as a compromise, in my view, some of the
21 members thought that the opposition should be given
22 some limitation. So a limitation on the number of
23 members and the classes of members was imposed upon
24 the university. I still can't figure it out to this
25 day after having reviewed the record numerous times,

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1 but that's how it happened.

2 VICE-CHAIR HOOD: Okay. This, forgive
3 me, doesn't have an exhibit number, you're now
4 asking for it to stay open until 1:00 and I believe
5 this is the current use of the facility now, and I'm
6 holding up a chart which is seven days a week. And
7 when I look at this chart, like any typical or
8 health and wellness center, the like, when I look at
9 this chart, looking at this chart and trying to make
10 an informed decision doesn't warrant being open
11 until 1:00. And if you can expound on that. When I
12 look at this card, at 10:00 on Sunday it looks like
13 nobody's in there. You close now at 10:00, right?

14 MR. BARBER: Yes.

15 VICE-CHAIR HOOD: Well, let me just say
16 from 9:30 to -- why not close at 9:00? Is it
17 feasible to stay open until 10:00, from looking at
18 this chart?

19 MR. BARBER: The question, is it
20 feasible to stay open until later on?

21 VICE-CHAIR HOOD: Yes, I'm --

22 MR. BARBER: And you're looking at a
23 Sunday, which is a day of particular low usage.

24 VICE-CHAIR HOOD: Let me rephrase it.
25 From a building standpoint.

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1 MR. BARBER: Yes.

2 VICE-CHAIR HOOD: From looking at this
3 chart, it's not feasible to stay open until 10:00,
4 or 9:00 actually. 9:00 would be the cut-off point,
5 from looking at what you all submitted.

6 MR. BARBER: On Sunday? I see what
7 you're saying. This is a Sunday, which shows, you
8 know, low usage and falls off. And that is, quite
9 frankly, our lowest day. What we would like and
10 what we think makes sense is with the authority to
11 stay open until 1:00, many times it will be, we
12 believe, based upon what we've heard from our
13 students, that it will be well used. Not the high
14 numbers as the 6:00 to 8:00, but still well used
15 into the later hours of the night. If we find on a
16 Sunday that the use drops off so significantly after
17 10:00 or 11:00, then as an operational matter, we
18 will close it. But we think we should have that
19 kind of flexibility to meet what is told to us what
20 students want. And some students would work out
21 late even on a Sunday, even though those numbers
22 might be later -- I mean, might be less than a late
23 night on some other day of the week.

24 COMMISSIONER JEFFRIES: Mr. Barber?

25 MR. BARBER: Yes.

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1 COMMISSIONER JEFFRIES: In terms of
2 surveys, I mean, I assume that when you're talking
3 about discussions or from students about wanting,
4 you know, later hours, that was done in like a
5 survey or how did you actually measure this demand?

6 MR. BARBER: I can't say that we
7 actually conducted surveys. We have operated this
8 facility over two years and we've had numerous
9 discussions, focus groups, feedback from our users
10 and this topic repeatedly comes up.

11 COMMISSIONER JEFFRIES: But so it's not
12 really documented in like written form any anything?

13 MR. BARBER: I'd have to ask --

14 COMMISSIONER JEFFRIES: Oh, okay.

15 MR. VECCHIONE: In the sense of a
16 survey, no, we have not done that. It's basically
17 use patterns and use patterns that also have been
18 guided from the Smith Center, the former facility.
19 You know, some of the patterns that you would see on
20 those charts, they could definitely be expanded with
21 the intramural program. You know, right now the
22 intermural program is not being scheduled on those
23 nights or on certain days, or whatever because of
24 how and when the facility closes. But right now we
25 are getting questions. They're asking us, our

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1 recreation department is, you know, "Can we, you
2 know, go later," and no, we can't because of the
3 zoning. Basically there's a heavy use Monday
4 through Thursday for intramurals and now they've
5 just come on that they want to even go on Fridays.

6 COMMISSIONER JEFFRIES: Okay.

7 MR. VECCHIONE: So that just came new.
8 So I guess what I'm trying to say is if we're
9 allowed the time, we can fill it with intramural use
10 and that's the pattern that we have found with team
11 intramural use.

12 Sure, we will we use it seven days a
13 week for intramural use until 1:00? No, because
14 students like to do other things on say a Saturday
15 night. They like to do other things sometimes on a
16 Thursday night. It just depends on how that trend
17 goes. But I guess what Mr. Barber is saying, we
18 would like the flexibility to be able to say when we
19 could do that and when we can't.

20 MR. MOORE: Mr. Vecchione, I think I
21 know what Mr. Hood is speaking of and I think he's
22 looking at the diminution of use from say 7:00 down
23 to 11:00 and I think his question is if nobody's
24 coming at 11:00 p.m., why does the center want to be
25 open. I think part of that would be say at 10:00,

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1 do people decide that the center will not -- well,
2 not 10:00, but 9:00, say, do people decide the
3 center's going to close and they leave and are there
4 people on campus who at 9:00 decide, "Well, it's
5 only an hour, so we can't go over there?"

6 MR. VECCHIONE: That's a good point and
7 that's something I should have brought up. When we
8 close at 10:00, we stop letting people come in to
9 use the facility at 9:30. So when we say we close
10 at 10:00, we call it 9:30-10:00. So you know, the
11 use stops a half hour prior to the close. So you
12 would definitely see it tailing off at that time.

13 VICE-CHAIR HOOD: Thank you. My other
14 question, Mr. Barber is the use and I'm concerned
15 about if this, depending upon where this application
16 goes, I believe it's Remington, Saint Mary's, is it
17 Goodfellows or Oddfellows?

18 MR. BARBER: Oddfellows.

19 VICE-CHAIR HOOD: Okay.

20 MR. BARBER: Goodfellows is a movie.

21 VICE-CHAIR HOOD: Oddfellows.

22 MR. BARBER: Gangsters. We're not
23 letting gangsters in.

24 VICE-CHAIR HOOD: But I guess my
25 question is, are we being fair to the people who are

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1 not in these areas? And I don't get over that way
2 too much, unfortunately, but are those significant
3 population in those areas? I guess, in other words,
4 how are we just going to say that these are the
5 people that can use it? What about someone who
6 lives a little further away?

7 MR. BARBER: Right.

8 VICE-CHAIR HOOD: And that can be an
9 issue.

10 MR. BARBER: I appreciate that. And you
11 will hear a request, and there's a representative
12 from the community tonight who will make that very
13 point and it came to our attention after our filing
14 and so this is not something that was in our
15 application. But once it came to your attention,
16 that is that in addition to the immediate neighbors,
17 and I told you the rationale for our immediate
18 neighbors. I mean, they've been there from the
19 beginning with us and we've talked to them because
20 they had the potential of being most directly
21 impacted being adjacent to this facility. So that's
22 why we started with them.

23 But in the last few weeks, there's been
24 a request that came to our attention that said in
25 addition to those immediate neighbors, you should

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1 allow another 100, again Foggy Bottom West End
2 residents who may live a little farther away have
3 access and we think that's frankly a good idea. We
4 would support that request and again we think
5 particularly with the longer hours we can
6 accommodate even that group without any adverse
7 impacted on the surrounding community.

8 VICE-CHAIR HOOD: Thank you. And I will
9 say that it's very unfortunate when I look the
10 update on the conditions that the advisory committee
11 has not gotten started yet because that may mitigate
12 and make our jobs a lot easier. And I'll just say
13 that.

14 MR. BARBER: It is unfortunate.

15 VICE-CHAIR HOOD: The other thing is the
16 ANC letter. I think it's dated May the 4th. And i
17 don't know, this issue may have been dealt with
18 earlier on, Madam Chair, I don't remember, but there
19 was testimony in the ANC letter and also there was
20 testimony I think at the previous hearing with GW's
21 proposal to expand its membership to include any
22 paying non-university members in violation of the
23 U.S. Tax Code. While that may not be in our
24 jurisdiction, Madam Chair, I would like to have an
25 answer on that because a lot of times we say stuff

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1 is not in our jurisdiction and then it just
2 escalates and it goes on and on and then it creates
3 a problem. So maybe, Mr. Moore, you may be able to
4 answer that.

5 MR. MOORE: Mr. Hood, that question came
6 up. There's also questions about housing
7 discrimination and the like that were alleged by the
8 ANC and we briefed those issues and the bottom line
9 was, one, there is no violation of the tax code.
10 Two, there's no violation of the District of
11 Columbia Equal Employment Opportunity Act or --

12 VICE-CHAIR HOOD: That was satisfied
13 earlier.

14 MR. MOORE: Right. Yes, we briefed all
15 that.

16 VICE-CHAIR HOOD: Okay.

17 MR. BARBER: And I will say, in
18 particular on the tax issue, I mean, again this is
19 how these type of facilities operated by colleges
20 and universities all around the country operate. If
21 there were any tax issue, it would be a question
22 UBI, unrelated business income, but it's not a
23 violation and I don't even think this secondary use,
24 this minor use of additional non-university people
25 even creates an unrelated business income issue, but

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1 that was fully briefed the first time around.

2 VICE-CHAIR HOOD: Okay. Good.

3 MR. MOORE: One of the things we said,
4 Mr. Hood, was that the university's bookstores, the
5 university's hospital, their other retail facilities
6 within the university operate the same way and open
7 to the public. The only difference between those
8 and this is this one has restrictions on numbers of
9 people coming in. But insofar as unrelated business
10 income or violation of the tax code, the hospital
11 would have to be in violation of the tax code, the
12 bookstore, the library, all of those that sell wares
13 would be in violation of the tax code. So we felt
14 that there was no violation whatsoever of the tax
15 code and that was alleged by one of the health club
16 owners over at 22nd and M Street, N.W. and we shot
17 that down.

18 VICE-CHAIR HOOD: Good point. Thank
19 you. Thank you, Madam Chair.

20 COMMISSIONER HILDEBRAND: I do have a
21 follow-up question on that. What are the access to
22 other facilities in the neighborhood that residents
23 could use? I'm just worried about taking business
24 from other viable District businesses whose only
25 sole income is the health club industry.

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1 MR. BARBER: This was an issue that was
2 brought up in the first hearing and I'm not sure how
3 valid it was, but in scaling down our request from
4 an additional 3,000 members and the issue was
5 raised, "Well, you're opening this to Foggy Bottom
6 West End at large and opening your doors, then this
7 could have an impact on these other businesses."
8 One of the reasons for scaling back on this request
9 and quite frankly limiting the number of residents
10 is partly to address that concern. And so now we're
11 not opening up to Foggy Bottom West End generally.
12 There are discreet populations. Immediate neighbors
13 and if the other proposal, another 100 would be
14 accepted and we don't think that would have any
15 impact on other establishments, if that's a valid
16 issue.

17 MR. MOORE: And, Mr. Hildebrand, let me
18 add to it. There was testimony at the first hearing
19 from some of the community resident who recognized
20 the price differential between the club at the Ritz-
21 Carlton at 22nd and M Streets N.W. and the president
22 of that club incidently appeared here, flew down
23 from Boston to appear here and the residents were
24 not particularly thrilled about the cost to them of
25 using that club and they was a fair number of them

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1 who wanted to use the health and wellness center,
2 but as of this point the university is not able to
3 offer that benefit.

4 COMMISSIONER HILDEBRAND: Could you
5 speak a little bit about the current use by Mount
6 Vernon campus students of the health and wellness
7 center? I've read somewhere in preparation for the
8 hearing today that students who utilized classroom
9 space in Foggy Bottom are allowed because they're
10 charged a fee as part of their tuition to use the
11 health and wellness center. What percentage of the
12 Mount Vernon campus does that represent?

13 MR. BARBER: Well, it varies from year
14 to year because as we schedule our courses and how
15 many courses we can schedule at Foggy Bottom as
16 opposed to how many we can schedule at Mount Vernon.
17 There's now a push to schedule more courses at Mount
18 Vernon. I think next fall it will go up to about
19 200 courses and so it does vary. But, most of the
20 current residents, some 300, had to take at least
21 one course at Foggy Bottom.

22 COMMISSIONER HILDEBRAND: So you're
23 saying that everyone at Mount Vernon, the students
24 now have access to the fitness center --

25 MR. BARBER: No, not everyone. I said

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1 most of those students do take --

2 COMMISSIONER HILDEBRAND: Three hundred
3 of 330?

4 MR. BARBER: Right. Right.

5 COMMISSIONER HILDEBRAND: Okay. So
6 basically everyone from Mount Vernon currently is
7 using the fitness facility except for 30 and the
8 faculty?

9 MR. BARBER: No, those people take a
10 class at Foggy Bottom and since the fee is tied onto
11 the health and wellness center, it's tied to the
12 tuition for the class at Foggy Bottom. Then they
13 have access to the extent that they take the class
14 and I said that number varies from year to year.
15 For this spring, we looked at that number and it was
16 about 300.

17 COMMISSIONER HILDEBRAND: So that's
18 almost all of the students there? Is that true for
19 the faculty as well? Do most of the faculty teach
20 at Foggy Bottom as well as Mount Vernon campus?

21 MR. BARBER: There are I would say about
22 half and half that teach both and then a cadre half
23 would teach solely on the Mount Vernon campus.

24 COMMISSIONER HILDEBRAND: So what you're
25 saying basically is that including the Mount Vernon

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1 campus into your numbers that you're projecting
2 right now would have no impact whatsoever because
3 they're already in your numbers?

4 MR. BARBER: Many of them are. Not all
5 of them. But yes, there would not be a significant
6 impact because and this is, quite frankly, something
7 that we hadn't focused on until we saw the numbers
8 who were taking classes here and how many of those
9 resided at Mount Vernon. But yes, particularly
10 since with the shuttle they've had very little
11 impact and they have had access, particularly this
12 past semester. Now that could change. If this rule
13 didn't change, then there would be more courses at
14 Mount Vernon next year and there would be some who
15 would take no classes and might not have access and
16 we don't think there's any adverse impact by
17 allowing any of those Mount Vernon students and
18 faculty and staff to use this facility.

19 COMMISSIONER JEFFRIES: Excuse me. Mr.
20 Moore, I have a question. In your opening statement
21 the order talked about special memberships. Is that
22 a defined term? What defines "special memberships?"

23 MR. MOORE: I think I was speaking to
24 friends of the university. That is, friends of the
25 president, friends and supporters of the university

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1 at the discretion of the president. There are a
2 cadre of people who are supporters of the university
3 who don't have the ability to use the facility and
4 as a business matter it's nice to be able if Donald
5 Trump's going to fly down here and talk to the
6 president and wants to use the club, right now the
7 answer is no, can't.

8 COMMISSIONER JEFFRIES: So, in terms of
9 special memberships, those were not spelled out in
10 the order in terms of donors and different
11 individuals?

12 MR. MOORE: The order specified faculty,
13 staff and students of the Foggy Bottom campus,
14 period. That's it.

15 COMMISSIONER JEFFRIES: Okay.

16 MR. MOORE: No one else.

17 CHAIRPERSON MITTEN: I just had one
18 question or one request, I guess. Attached to your
19 submission is the rundown of compliance with the
20 conditions? And for Condition 10, it's the position
21 of corporation counsel, and if you'd like to hear
22 that directly from them, Ms. Nagelhout can say it,
23 but that the stay's been lifted for Condition 10 and
24 this submission really doesn't address compliance
25 with Condition 10. So if you could --

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1 MR. BARBER: Speak to that?

2 CHAIRPERSON MITTEN: -- speak to that or
3 submit something. It's up to you.

4 MR. BARBER: I'm prepared to speak to it
5 tonight.

6 CHAIRPERSON MITTEN: Okay.

7 MR. BARBER: We have two issues on
8 Condition 10 and as you know, Ms. Mitten, and as the
9 other Commissioners may not know, the BZA issued an
10 order on remand on Condition 10 and let me just give
11 a little bit of background. Condition 10 of the
12 campus plan order required the university to house
13 freshman and sophomores with certain carve outs in
14 university residence halls on campus.

15 We had challenged this condition in
16 court, along with other conditions. The issue was
17 we have proffered that the requirement be to house
18 them in university residence halls and the condition
19 came down university residence halls on campus and
20 specifically what we call HOVA, Hall of Virginia
21 Avenue, located on Virginia Avenue, was only
22 designed to be used for freshman because it doesn't
23 have cooking facilities and we use that as a
24 freshman residence hall. The court took a look at
25 this and they initially stated in July and then when

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1 they came out with their order on September the
2 11th, they upheld the condition, but said, "We're
3 going to continue the stay because we think a
4 resolution of this issue is in the best interest of
5 justice and so we're going to continue this stay and
6 leave it for the zoning authorities to deal with it
7 on remand."

8 We looked at and we thought the Board of
9 Zoning Adjustment was going to deal with it on the
10 remand. When we got the order, I think it was dated
11 April 26, the BZA cites that language from the court
12 that we think that dealing with this is in the best
13 interest of justice, but then it says, "We take no
14 action on remand." So our interpretation is that
15 the stay is still in place because the stay was put
16 in there pending action on remand and by the
17 language of the BZA order it specifically says, "We
18 take no action on Condition 10."

19 There is another point. Even if you
20 think the stay is lifted, for this fall, we don't
21 think it's an issue because the language of the
22 condition says, "House freshman and sophomores on
23 campus to the extent housing is available." At this
24 stage, even, you know, certainly the stay was in
25 effect until April 26. We think it's still in

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1 effect. But even if it was lifted April 26, by that
2 time, there was no more housing available on campus.
3 We've assigned housing for the fall. That process
4 starts in December when we start getting early
5 admissions requests. It really kicks in in high
6 gear in February and March when returning students
7 indicate where they want to stay and we've made all
8 assignments. We've received deposits. And so for
9 this fall, there's no housing on campus available
10 for those freshman that we have now assigned to Hall
11 on Virginia Avenue. So for those two reasons we
12 think we are in compliance with the order.

13 We realize this is an issue we need to
14 deal with. We realize going forward that even if
15 there's no housing available for this fall, going
16 forward this is an issue that needs to be dealt
17 with. What the BZA did was when it says it took not
18 action on this, it deferred us to the Zoning
19 Commission. They said, "You're before the Zoning
20 Commission on other issues. If you have further
21 issues under the campus plan, you really should take
22 them to the Zoning Commission."

23 This is one of those issues we're going
24 to bring before to this body. We think it calls
25 into consideration some other issues that need to be

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1 addressed under the campus plan, the whole issue of
2 the off-campus residence halls, but we would like to
3 file a case that addresses that issue. So we're not
4 ducking the issue by any means. We plan to bring a
5 case before you that will address that issue. But
6 as of now, we think we are in compliance either
7 because the stay is still in effect, by your reading
8 of the order, or even if the stay is lifted by the
9 terms of the condition, no housing is available
10 given how universities operate. And this is not
11 peculiar to GW. We all make assignments in the
12 spring for the fall and those assignments are made.

13 CHAIRPERSON MITTEN: Thank you. Anyone
14 else? Ms. Miller, questions? Would you just
15 identify yourself?

16 MS. MILLER: I'm going to do that.

17 CHAIRPERSON MITTEN: Okay.

18 MS. MILLER: I'm Dorothy Miller, chair
19 of ANC 2-A and I live at 2440 Virginia Avenue, N.W.,
20 a block away from this mess.

21 And, Mr. -- I want to ask the lawyer a
22 question about -- he said the bus stops a block away
23 from the -- whereabouts does the bus stop load and
24 unload?

25 MR. BARBER: 23rd and H and the health

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1 facility is at 23rd and G.

2 MS. MILLER: There is no allowing --

3 CHAIRPERSON MITTEN: You're just asking
4 your questions now.

5 MS. MILLER: Okay. I just --

6 CHAIRPERSON MITTEN: You can testify
7 later. Testify late.

8 MS. MILLER: All right. You can't do
9 that. All right. The other thing is, did they take
10 into account the Kennedy Center expansion that's
11 coming, which is going to change everything,
12 including the traffic on Virginia Avenue?

13 MS. WHITE: What we did for our traffic
14 analysis is we looked at an order of magnitude. We
15 looked at each of the user categories and assigned
16 an assumption as to how they would arrive. For
17 example, the people in the immediate --

18 MS. MILLER: That doesn't answer my
19 question.

20 MS. WHITE: I'm going to get to it. One
21 second, Dorothy, please.

22 So, after looking at each of the user
23 categories and knowing how each of the people get
24 there, the primary user category that would actually
25 drive to the campus would be the people within the

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1 President's Club. And because that number is such a
2 small amount, we didn't have to do what you have
3 typically seen before you, the level of service
4 analysis at each of the intersections. What happens
5 is you look at the order of magnitude of the impacts
6 of something. If the order of magnitudes are so
7 small, jurisdictions don't require you to go through
8 that level of detail of analysis and that's why DDOT
9 supported our analysis without going into the detail
10 of the traffic, you know, associated with the
11 Kennedy Center.

12 MS. MILLER: You haven't even looked
13 at --

14 CHAIRPERSON MITTEN: Would you turn on
15 your microphone? And are you asking a question?

16 MS. MILLER: I'm going to ask a
17 question.

18 CHAIRPERSON MITTEN: All right.

19 MS. MILLER: I'm trying to get to it.
20 The current plan is to have all of the Kennedy
21 Center traffic dumped on Virginia Avenue. So what I
22 was asking, did you take that into consideration and
23 obviously you didn't because what you've done is
24 taken into consideration only what is current, not
25 what is coming down.

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1 CHAIRPERSON MITTEN: Is she accurate in
2 saying that you did not take into consideration the
3 change in traffic pattern on Virginia Avenue?

4 MS. WHITE: We did not do any specific
5 counts or projections of that. We looked at the
6 order of magnitude of the expected increase. And
7 because that was such a small order of magnitude
8 compared to the downtown urban traffic with 3,000
9 peak-hour trips versus eight trips that this would
10 generate that's distributed throughout the network,
11 then it's not necessary to do a full blown traffic
12 impact analysis that we would typically do for some
13 brand new development.

14 CHAIRPERSON MITTEN: Okay.

15 MS. MILLER: Mr. Barber, do you all give
16 diplomas from Mount Vernon University?

17 MR. BARBER: No.

18 MS. MILLER: I didn't think so.

19 MR. BARBER: Okay.

20 MS. MILLER: The other thing is, aren't
21 you currently having racquetball sport competition
22 at the health and wellness club which you all said
23 you would not have any competitive sports there?

24 MR. VECCHIONE: We do not have any
25 competitive sports competitions at the health and

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1 wellness center.

2 MS. MILLER: Then the Hatchet is wrong
3 in saying that you do?

4 MR. MOORE: He's answered the question,
5 Ms. Miller.

6 MS. MILLER: Not, correctly, but -- are
7 you aware that the Remington is a commercial
8 project? It's not a residential project and they're
9 not fulfilling their license? They're supposed to
10 be a residential place, and they're not.

11 CHAIRPERSON MITTEN: What's the
12 question?

13 MS. MILLER: The question is, are they
14 aware that the Remington is a commercial project,
15 not a residential building?

16 MR. BARBER: No, I'm not aware of that.

17 MS. MILLER: Well, that's what it is.
18 Okay. And if you only open up, as our ANC
19 Commissioner suggested, to 100 people, wouldn't that
20 be discriminating against some by refusing some and
21 opening to some? You'd have to justify who you
22 approved and who you didn't approve? I would call
23 that discrimination, wouldn't you?

24 MR. BARBER: The facility is already
25 restricted by a zoning order. We think the type of

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1 categories of users, if this application is
2 approved, that would be permitted to use the
3 facility, would not be violation of any anti-
4 discrimination law.

5 MS. MILLER: It would be if you select
6 and choose, wouldn't it?

7 MR. BARBER: I do not think so. Just
8 the fact that you select and choose does not make it
9 discriminatory in violation of law.

10 MS. MILLER: That's strange. You all
11 said that about the campus plans.

12 MR. BARBER: Was that a question?

13 MS. MILLER: I think that will do that
14 for now because I can add to my testimony.

15 CHAIRPERSON MITTEN: Thank you. All
16 right. Thank you, all.

17 We're now to move to the report by the
18 Office of Planning. Mr. Fondersmith?

19 MR. FONDERSMITH: Good evening, Madam
20 Chairman, members of the Zoning Commission. I'm
21 John Fondersmith, Development Review Specialist in
22 the Office of Planning and I'll present the Office
23 of Planning report on this case. With me is Ellen
24 McCarthy, Deputy Director of the Office of Planning.

25 You have our written report and the

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1 attached graphics and materials that incorporates
2 some material with appropriate updates from the
3 initial Office of Planning report in 2002.

4 CHAIRPERSON MITTEN: And because we have
5 had a chance to review it, if you could just hit the
6 high points, that would be great.

7 MR. FONDERSMITH: I will then. Our
8 summary recommendations are on page 2 and are
9 outlined then in the table on page 17. And we
10 recommend that George Washington University be
11 allowed to offer memberships to certain classes of
12 users. That's the Mount Vernon campus students,
13 faculty and staff, adjacent residents, adjacent
14 institutions and the School Without Walls. And
15 these are the classes among the classes that the
16 university requested. And that number comes out to
17 1,021 potential new members. It doesn't mean there
18 would actually be that many, but potential new
19 members. That is therefore excluding in our
20 recommendation additional members of the President's
21 Club.

22 Now, I think this has been certainly is
23 in the material and I think was alluded to. There
24 are some members of the President's Club now that
25 are using the facility because they are faculty

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1 members and they of course could, in that class,
2 keep on using it. And we do not recommend opening
3 up to visitors primarily because we see that as
4 beginning to change the nature of the facility.

5 In terms of hours, we recommend allowing
6 the wellness center to remain open until 11:30 on
7 all days. That was our previous position. There is
8 this thing, the question that was alluded to about
9 use. We think that is a reasonable time to remain
10 open.

11 And then we recommend that the revised
12 conditions be limited to some period, we suggested
13 three years, because we do believe that with the new
14 residence halls opening, especially the Ivory Tower
15 residence hall right next door, eventually the new
16 residence hall several blocks away that was approved
17 Monday night, that we may see a shift in utilization
18 and of course there would be the experience of these
19 new classes of users also if the Zoning Commission
20 agrees to allow them.

21 And so as I say, our recommendations are
22 summarized in the table on page 17 where we try to
23 indicate what we said before and the consistency of
24 that. Now, in some cases, because the university
25 has scaled back, these overall numbers are lower

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1 than they were proposed to be by the university two
2 years ago. We did not embrace all of that before,
3 but this is a lowering.

4 In our presentation or in arriving for
5 this, I really wanted to really focus on the
6 location of the wellness center and the adjacent
7 patterns of development. You have the aerial photos
8 and the oblique photos in the report and you can see
9 there, just looking at those photos, which one is a
10 year ago and one is two years ago, you get a sense
11 of the change that's happening in this corridor.
12 Major development by George Washington University.
13 The Ivory Tower residence hall across the street,
14 the town house residence hall, which is now
15 complete, the business school, which is under
16 construction, the relatively minor Smith Hall
17 renovation and expansion and of course in the top of
18 the photograph, the new hospital and the site where
19 the existing hospital has been demolished. You also
20 see in those photographs the proximity of the
21 adjacent neighborhood that would be impacted if
22 there is impact from the facility. There would also
23 be some impact of course to the east, but we think
24 the main impact to the extent that -- of an impact
25 is in the residential area of apartments and town

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1 houses to the west of 24th Street.

2 So, we then worked through our framework
3 for analysis. We wanted to make the point that
4 although we recognize the university's concerns
5 about usage of the facility, that the impact on the
6 neighborhood from a zoning standpoint is really our
7 primary concern. Secondly, that it is a student
8 facility primarily and that students should have a
9 priority to be able to use it. We think it's
10 appropriate to reach out to nearby residents as long
11 as this doesn't create a problem and interfere with
12 students.

13 We stress the need for sensitive
14 management of the center. The Zoning Commission in
15 one way or another can outline general parameters,
16 but the university really has the opportunity to
17 find tailor through their management practices, and
18 they've talked to some of these tonight, to ensure
19 that there is virtually no impact. So we think
20 that's an important thing for the Commission to
21 stress to the university.

22 And finally, we did suggest this three-
23 year limit to evaluate any impacts from these
24 changes.

25 I should have mentioned of course, and

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1 it was mentioned before, the proximity of the School
2 Without Walls and the relatively short distance they
3 would have to walk to use the center.

4 We can go into additional detail if
5 you'd like about the classes of users. One of the
6 things that we had raised with the university and
7 it's good to get out on the table clear tonight is
8 the fact that of the Mount Vernon students, a great
9 many of them are at least eligible to use the center
10 today.

11 And the residents of adjacent buildings,
12 I mean, as you can see from your map, both Remington
13 and Saint Mary's Court, one's right across the
14 street and the other one is right around the corner.
15 So certainly all those people, we think in almost
16 all cases, would walk. The adjacent institutions
17 are a little not as clear because those residents,
18 the Saint Mary's Church and the Oddfellows, they
19 don't necessarily have to be residents of the
20 community. They might be coming in from someplace
21 else. I think as the traffic report indicated, they
22 might be therefore driving in to use it. But the
23 numbers that the university has requested are
24 relatively low, 10 to each of those facilities, and
25 probably in most cases, they would be using it when

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1 they were there on church business or Oddfellows
2 lodge business.

3 The President's Club members are the
4 ones -- it that may be that the numbers are not that
5 great, but in terms of the driving and impacts,
6 that's where you would potentially get the most
7 impact in terms of automobile impact at least. And
8 so we did not recommend opening that membership up
9 except for, as we say, there are some facility
10 members who are also members of the President's
11 Club.

12 The School Without Walls, clearly it's a
13 little over a block away. Impact there would be
14 limited.

15 And the visitors, while a relatively
16 small number was proposed by the university, we
17 thought that was another step in changing the nature
18 of the facility.

19 I think those are the main points. Let
20 me just mention then the two issues about the squash
21 team and opening at 6:00 in the morning. Both of
22 these had come up in the previous hearing and at
23 that time we said that we did not have any problem
24 with that. We did not think opening the facility at
25 6:00 in the morning would be a big problem. We

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1 simply think that the Commission needs to kind of
2 recognize that so that this ambiguity is not
3 floating out there. The previous order is what the
4 university is relying on. The previous order is
5 simply not clear. It deals with closing times, but
6 not opening times. So we would suggest that that be
7 clarified.

8 And on the squash team, what the
9 university has indicated to us in reply to
10 questions, is that there's been some practice of the
11 squash team in the center, but not yet any inter-
12 collegiate activities. We said before and we hold
13 to this view, we don't think that's a problem.
14 We've gone and looked at it. They're very nice
15 facilities and it's certainly not a spectator sport
16 kind of situation. You've got a hallway there and
17 the squash courts opening off that. I suppose some
18 squash fanatics could, a few could gather in the
19 hallway and watch, but it's not a spectator kind of
20 thing. We don't think that's going to create a
21 problem. So that's the same kind of thing. I would
22 just, from your standpoint, be good to recognize
23 that and to clarify it.

24 CHAIRPERSON MITTEN: All right. Thank
25 you. Any questions?

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1 MS. McCARTHY: Madam Chair, I just
2 wanted to summarize and emphasize just a few of our
3 key points.

4 Basically, the basis of your
5 recommendation is this is a high-intensity use. It
6 is located at the fringe of the campus. It's a
7 block and a half to two blocks from a low-scale
8 residential historic neighborhood which, by virtue
9 of being historic, has very limited parking. We're
10 concerned because the facility was built with very
11 limited parking, 140 spaces that are not 140 spaces
12 reserved for the wellness center. That 140 spaces
13 is part of the university's overall parking number
14 and it serves night students and people who are
15 coming to campus for campus purposes as well.

16 The peak hour when people use the
17 facility between 6:00 and 8:00 p.m. also happens to
18 be the peak hour when residents are coming home and
19 are looking for parking on the street. You've got
20 the practical capacity of the center, according to
21 the university's information, at 675, but the
22 President's Club alone, the members not already
23 permitted to use the facility, as I believe, if I do
24 the math right, in at least one place, 245 members,
25 so as a portion of the practical capacity of the

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1 center, it's a fairly large number. The university
2 has argued that they want to open up the facility
3 because they have extra space, although as our
4 report pointed out before, the university was
5 figuring they were at 12 percent utilization two
6 years ago before the dorm opened up across the
7 street. They haven't updated those numbers, I don't
8 believe, but the Brailsford & Dunleavy report
9 indicated that 15 to 25 percent is a typical kind of
10 utilization. So our feeling at the time and our
11 feeling now is that the facility was already close
12 to what would be typical utilization without the
13 beds opening next door with over 700 that are right
14 across the street that will be opening this fall.

15 The classes of members that we've
16 recommended, Saint Mary's and the Remington, no
17 parking demand, they're right next door, and not
18 generally peak hour users. Mount Vernon, no parking
19 demand. Maybe peak hour, maybe not. School Without
20 Walls, no parking demand. Generally off peak users.
21 I assume predominantly when the students would
22 finish school at 2:00 or 3:00 in the afternoon.
23 President's Club, most likely to drive, most likely
24 to use during peak hours. And the university's
25 argument that they need to allow members of the

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1 President's Club because that's the way to court
2 donors flies in the face of the fact that if you are
3 wealthy enough to be giving money to the university,
4 presumably you have access to other health care
5 facilities. It's not clear why this would be
6 critical to getting donors to the university and our
7 concern is were this to now to become a benefit of
8 joining the President's Club, then those people
9 who are most interested in utilizing the health
10 facility will see this is a relatively inexpensive
11 tax deductible way to give money to the President's
12 Club and become users of the facility. So those are
13 the reasons that we were particularly concerned
14 about the President's Club. We thought the other
15 users, because they wouldn't be generating a traffic
16 demand and/or, as the university's original
17 rationale was, because they are inconvenienced by
18 the facility and therefore are the ones that deserve
19 to get the benefit of the facility, that that made a
20 lot of sense as a rationale. So, just wanted to
21 summarize Mr. Fondersmith's report and sort of give
22 you the key reasons why the Office of Planning made
23 those conclusions. Thank you.

24 CHAIRPERSON MITTEN: Thank you. Any
25 questions from the Commission for either Ms.

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1 McCarthy or Mr. Fondersmith?

2 COMMISSIONER HILDEBRAND: Yes, I had a
3 question. Were you surprised in preparing this
4 report to find the number of students from Mount
5 Vernon campus that were currently the facility and
6 is that in the spirit of the original agreement?

7 MR. FONDERSMITH: You mean in the --

8 COMMISSIONER HILDEBRAND: The original
9 BZA agreement to use the facility.

10 MR. FONDERSMITH: To limit -- you know
11 the original --

12 CHAIRPERSON MITTEN: Would you turn on
13 your microphone?

14 MR. FONDERSMITH: Yes, I'm sorry. To
15 limit it to Foggy Bottom. Well, it's a -- it of
16 course is bringing in a new group of students and we
17 had asked the university about this and really just
18 heard the number as you did tonight. To be fair,
19 from the university's standpoint, they have certain
20 programs where those students are taking courses and
21 using in some way the Foggy Bottom facility.

22 We were concerned before, and we made a
23 bigger point of it, about the need for an adequate
24 shuttle transportation system. The university has
25 placed in the record this time, I don't think it was

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1 as clear last time, although perhaps it existed, has
2 placed in the record this time information about the
3 shuttle system and it's a pretty frequent system.
4 We would suggest that the Commission make the point
5 that if there is a problem there that that shuttle
6 system may need to be augmented in some way. I
7 appears to be a pretty significant system.

8 MS. McCARTHY: But to get back to the
9 surprise part of your question, I think we knew that
10 those students who were at Mount Vernon and also
11 went to Foggy Bottom could use this facility
12 already. I don't think we knew that it was -- we
13 were surprised to find out it was that high a
14 percentage of those students and that the intensity
15 of the use, 68,000 students in one month, comes to
16 about over 2,200 a day using that shuttle so that is
17 I think a little higher intensity use than we had
18 expected. Exhibit

19 COMMISSIONER HILDEBRAND: Perhaps if
20 there's any good news there it's that there doesn't
21 seem to be any negative impact from a parking or
22 circulation standpoint beyond what people were
23 expecting.

24 CHAIRPERSON MITTEN: Anyone else? Any
25 questions? Mr. Moore?

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1 MR. MOORE: Thank you. I hope not to be
2 here long. I have a number of different issues with
3 the Office of Planning report, but I'll try to just
4 highlight them so that we're not here all night.

5 First let me say that I respect Mr.
6 Fondersmith. He is had a long and distinguished
7 history as an officer of the Office of Planning and
8 I respect that. However, we don't always agree and
9 tonight is one of those instances.

10 First let me say that --

11 CHAIRPERSON MITTEN: He needs a little
12 workout, so go ahead. Give him one.

13 UNIDENTIFIED SPEAKER: He's not eligible
14 to use the center.

15 CHAIRPERSON MITTEN: It's not that kind
16 of workout.

17 UNIDENTIFIED SPEAKER: Touché. Touché.

18 MR. MOORE: First of all, Mr.
19 Fondersmith, on page 7 of the Office of Planning
20 report you indicate that George Washington
21 University has the ability to sensitively manage the
22 wellness center to avoid potential impacts. And I
23 want to say thank you. Thank you. Because you're
24 absolutely right.

25 On page 8 of your analysis, however, you

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1 point to the Brailsford & Dunleavy study which says
2 that 15 to 25 percent is not uncommon for a similar
3 facility and you say that this means the under-
4 utilization is not as great as it seems compared to
5 other facilities. What does that count? What does
6 that mean in terms of land use? What impact does
7 utilization have an issue as a land use issue?
8 Isn't that an operational issue for the university
9 and not a land use issue for the Zoning Commission?

10 MS. MCCARTHY: Let me just answer that,
11 Mr. Moore. I think what that was directed to is
12 that the university had argued strongly that one of
13 the reasons it should be permitted to increase
14 utilization of the facility was because it was being
15 under-utilized and so we were merely responding to
16 the fact that in fact it did not appear that under-
17 utilized when compared to other facilities.

18 MR. MOORE: The Office of Planning
19 report bases its conclusions on its supposition that
20 the facility is under-utilized, but isn't it a
21 question of numbers and not who those numbers
22 represent? Isn't the impact question a question
23 that relates to the numbers and not who those people
24 are because they all have the same impact?

25 MS. MCCARTHY: Well, no.

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1 MR. FONDERSMITH: No, they don't.

2 MS. MCCARTHY: No, because that's our
3 point is people who are on the campus anyway because
4 they're students or people who live next door have a
5 very different impact than people who are driving
6 across town and parking at 6:30 at night on the
7 street.

8 MR. MOORE: Where in the university's
9 application is the university asking for people who
10 drive across town and park on the public streets? I
11 think what the university --

12 MS. MCCARTHY: The President's Club.

13 MR. MOORE: The President's Club. We've
14 already said the people are already there.

15 MS. MCCARTHY: No, the President's Club
16 is not already there. There are a few members of
17 the President's Club who are faculty members.
18 They're already members of the facility. The
19 additional people are anybody that pays the money to
20 become a member of the President's Club.

21 MR. MOORE: On page 8 of your report,
22 Mr. Fondersmith, you talk about student priority and
23 you say that if you add more people to the facility
24 that are not students, this means that adding too
25 many users would cause peak use at some of the most

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1 popular areas such as the fitness center when
2 students want to use the equipment, students are
3 being assessed a fee, might be bumped for other new
4 users. You recall that the peak usage was 12.6
5 percent of the 1,973 capacity of the facility and 36
6 percent of 675. At the end of the day, isn't it the
7 university's business and not a land use issue as to
8 whether students get bumped or not bumped?

9 MR. FONDERSMITH: Well, I think this is
10 where you kind of get into how these numbers are
11 being manipulated and the fact that as approved this
12 is basically to be a student facility. What's
13 tricky, I think that you know, about the capacity
14 thing is that one number is based on square footage
15 and fire marshall's thing and then the university's
16 has come forth with a different capacity number
17 which still, however, doesn't reflect all of the
18 spaces in the thing. But, what you have is a
19 situation where there are certain areas in the
20 facility that at least at certain times will be more
21 used and to try to cram in effect additional users
22 in is hurting the basic purpose. So that's one of
23 the things we meant by the ability of the university
24 to sensitively manage this facility, both for the
25 benefit of the students, first of all, and also in

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1 terms of impacts on the community and so on.

2 MR MOORE: Thank you. On page 10 of
3 your report you say that since the Office of
4 Planning formerly supporting offering memberships to
5 all residents of Foggy Bottom West End, the Office
6 of Planning in its November 2002 report supported
7 offering up to 3,000 memberships to the residents of
8 Foggy Bottom West End. Yet, in this report, it says
9 that the Office of Planning recommends that the 240
10 members of the President's Club would have an
11 adverse impact, when if you add the 240 members of
12 the President's Club to the current application,
13 we're talking about less than half of those who the
14 Office of Planning had recommended at no impact in
15 its November 2002 report. Are you not?

16 MR. FONDERSMITH: Well, of course we
17 were very glad to see the university scale back the
18 overall numbers. We said presumably up to
19 theoretically 1,000 memberships. If you remember,
20 the 3,000 figure that the university suggested
21 before included workers in the area and presumably
22 there was an effort there to cast the net kind of
23 widely down as far as the State Department, down to
24 Constitution Avenue, I think, to in effect change
25 the nature of the facility.

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1 But what we meant here, since we did say
2 that we would support before residents of the
3 community on the assumption that in almost all cases
4 they would walk in, we say here it's certainly
5 logical now that the university has scaled that back
6 to 102 memberships, all of which might not be used.
7 In two residential buildings that are immediately
8 adjacent to the facility, we certainly think we can
9 support that.

10 Let me make one other point that we said
11 in the report and which I neglected to say and that
12 is we think it's very important that these
13 memberships, however the Commission decides to allow
14 them, are on this class of users business. In other
15 words, if they're not used in one class, they go
16 unused, they don't roll over in some way. Some of
17 these memberships that add up in our recommendation
18 to a little over 1,000 additional users just might
19 not be used at all, so the number might be in fact
20 somewhat smaller.

21 MR. MOORE: Thank you. Just a couple
22 more questions. On page 10 of your report you
23 indicate in talking about the President's Club you
24 react to the university experts finding that adding
25 the President's Club members as requested would

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1 result in nine new vehicle trips on a typical
2 weekday. You say, "While this estimate of
3 additional vehicle trips is relatively small, this
4 could provide additional transportation and parking
5 impacts to the adjacent neighborhood." You say
6 "could." Isn't it also true that it could not?

7 MS. MCCARTHY: It certainly is true that
8 it could not. I think what we were suggesting there
9 is that we thought that was a very low estimate.
10 And as I just indicated, if getting a free
11 membership or a low-cost membership to the health
12 facility is a benefit of the President's Club, then
13 we think it might increase the number of people who
14 would join the President's Club for that purpose and
15 who would be most likely to be heading there on
16 their way out from the office, just dropping by,
17 parking, using the facility and then keeping on
18 going at home. It's another reason why we proposed
19 a three-year time limit because if it turns out at
20 the end of three years without the President's Club
21 and with all these new students in the dormitory
22 that there is no adverse impact, you could come back
23 and begin to be increasing the numbers at that point
24 in time.

25 MR. MOORE: But do you have any evidence

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1 for the record that the addition of the 240 members
2 of the President's Club would, instead of could,
3 cause an adverse impact?

4 MS. MCCARTHY: The Office of Planning
5 did not do a traffic study on the project.

6 MR. MOORE: Thank you. Then you talk
7 about in that same paragraph that adding the
8 President's Club membership would expand how the
9 wellness center is used. Well, aren't there 275
10 President's Club lockers in the center right now?

11 MS. MCCARTHY: I haven't counted them.

12 MR. FONDERSMITH: That's our
13 understanding. That was the figure given us from
14 the university.

15 MR. MOORE: If that is so --

16 MR. FONDERSMITH: Apparently built
17 despite, you know, the original order.

18 MR. MOORE: And aren't there members of
19 the President's Club there at the center now? Well,
20 you said there are 25, aren't there now?

21 MR. FONDERSMITH: There are 25 there now
22 because what we understand from you, from the
23 university, is that they are faculty members also
24 and therefore they're entitled to use the center in
25 that role.

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1 MR. MOORE: So the expansion of the
2 President's Club wouldn't necessarily expand an
3 existing use, would it? That's expand the nature of
4 the use there now because they're already there,
5 aren't they?

6 MS. MCCARTHY: No.

7 MR. FONDERSMITH: No, not 270 of them.

8 MR. MOORE: There are 275 lockers.

9 MR. FONDERSMITH: Right.

10 MR. MOORE: Yes. Okay.

11 MR. FONDERSMITH: Now there are 275
12 lockers, but there are 25 faculty members who happen
13 also to be, you know, members of the President's
14 Club who are using it.

15 MR. MOORE: On page 11 of your report
16 the Office of Planning recommends not allowing the
17 additional class of guest memberships. Allowing
18 guests even in small numbers, and you know it's
19 small numbers, begins to change the nature of users
20 of the wellness center. Isn't that a policy and not
21 a numbers issue? I mean, if adding guests of the
22 university, parents of students there, would have no
23 adverse impact because of noise, because of traffic
24 or any other objectionable condition, isn't that the
25 absence of impact by these guests coming to the

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1 university?

2 MS. McCARTHY: But where did you show
3 that those guests who may come in their own separate
4 care along with the person with whom they're
5 visiting who may be likely to come at the same time
6 as the person that they are coming in with, which
7 presumably is also likely to be during the peak
8 hour. We thought those were all reasons to suspect
9 that in fact that would significantly exacerbate
10 whatever adverse impact there might be and what we
11 felt that what had been proposed, this notion of
12 there would be 25 and at that point in time there
13 was a person at the desk that was going to tell two
14 people standing in front of that person that the one
15 could use the facility and the other one was going
16 to have go home, that that seemed unlikely to be an
17 enforceable system.

18 MR. MOORE: I'm glad you asked the
19 question where did we get out notion of no impact
20 and I'll tell you.

21 CHAIRPERSON MITTEN: Well, see, you're
22 asking the questions now. You're not --

23 MR. MOORE: Well, I'm just responding.
24 She asked --

25 CHAIRPERSON MITTEN: We're not having a

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1 conversation. I really would like it to just be
2 cross examination.

3 MR. MOORE: All right.

4 CHAIRPERSON MITTEN: You want to rebut
5 something at the end, you're welcome to.

6 MR. MOORE: All right. In reaching that
7 conclusion, had you considered the findings of the
8 Brailsford & Dunleavy firm?

9 MS. McCARTHY: We did address the
10 Brailsford & Dunleavy report.

11 MR. MOORE: In reaching your conclusion
12 as to no impact, had you read the report and the
13 testimony of Grove Slade --

14 MS. McCARTHY: We did.

15 MR. MOORE: -- that it would have no
16 impact?

17 MS. McCARTHY: We did.

18 MR. MOORE: In reaching your conclusion,
19 had you read the recommendation of your own District
20 of Columbia Department of Transportation that the
21 approval of this application would not have an
22 adverse impact on the traffic system of the city?

23 MR. FONDERSMITH: Let me find the Grove
24 Slade because I think, as we say, we're talking
25 about relatively small numbers. But, on page 4 of

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1 the Grove Slade updated analysis they say, "Guests
2 and members would most likely drive to Foggy Bottom
3 campus, although usually there for some other
4 reasons other than to just use the wellness center."
5 And for purposes of the analysis that they did, they
6 assumed that 100 percent of these guests would drive
7 and then they thought that they would use the
8 university parking garage. Now, that's their
9 assumption whether the percentage driving is that
10 much or not. But that was their assumption.

11 MS. MCCARTHY: It was also based on a
12 survey of the existing members of the President's
13 Club who are not entitled to use the facility.

14 MR. MOORE: The Office of Planning has
15 surveyed the existing members of the President's
16 Club that are not entitled to use the facility?

17 MS. MCCARTHY: No. Grove Slade surveyed
18 the members of the President's Club.

19 MR. MOORE: And Grove Slade found that
20 it would have no adverse traffic impact, is that not
21 correct?

22 MS. MCCARTHY: That's what I'm saying.
23 Based on the existing membership, but one of the
24 reasons that we were concerned about the Grove Slade
25 estimate was that it did not take into account what

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1 might happen should joining the President's Club and
2 therefore being allowed to use the fitness facility
3 become the driver of a new set of members who were
4 joining the President's Club because they were
5 interested in using the fitness facility.

6 MR. MOORE: One more question. It's
7 probably a two-part question. On page 12, I read
8 the Office of Planning continues to believe that
9 extending evening hours beyond 10:00 p.m. could be
10 accommodated. Could be accommodated. Thank you for
11 that. But staying open until 1:00 a.m. seems too
12 late. What does "seems too late" mean?

13 MS. MCCARTHY: It was trying to make an
14 assessment of what's a reasonable bed time for the
15 people who live around there. I mean, if you go bed
16 at 11:00 or 11:30 and you are awakened, that's one
17 thing. If you are trying to go to bed and it's
18 12:30 or 1:00 -- or if you're asleep and it's 12:30
19 or 1:00 and you are awakened, that's a far greater
20 inconvenience. We felt it seemed like 11:30. That
21 may be -- because, you know, Mr. Fondersmith and I
22 are night owls. Now, people that go to bed at
23 10:00, you know, we've been trained over the years
24 of late attendance at Zoning Commission sessions,
25 you know, to stay up late, but people like Ms.

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1 Miller may be, you know, turning in at 8:00 and
2 therefore -- oh, 9:00 -- and therefore, to her,
3 being awakened at even 11:30 may be late.

4 MR. MOORE: In reaching that conclusion,
5 did you assume that the campus closes down at 11:00,
6 when you thought that seemed too late?

7 MS. MCCARTHY: Well yes, but as I
8 pointed out, one of the things that makes the Office
9 of Planning sensitive to adverse impacts is the
10 location of this facility, one and a half to two
11 blocks away from a low-scale residential
12 neighborhood immediately adjacent to a residential
13 condominium and less than one block away from an
14 elderly housing project. So all of those meant that
15 there is the potential for adverse impact of noise
16 and number of users from this facility because of
17 where it is located. If the rest of the university
18 campus has students at the Marvin Center or Smith
19 Center, or Lizner Hall or dormitories, they're not
20 necessarily immediately across from a set of
21 residential uses.

22 MR. MOORE: I would just note here that
23 all of the property owners that surround the health
24 and wellness center --

25 CHAIRPERSON MITTEN: Mr. Moore?

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1 MR. MOORE: -- have issued letters of
2 support.

3 MS. MCCARTHY: Well you know, it's
4 interesting you should mention that because when I
5 was looking at the newest letter from the property
6 company at the Remington, they indicated their
7 support of the Remington using it and therefore they
8 said supporting the zoning case. But I didn't see
9 any language that specifically said that the
10 Remington was supporting expanding the use of the
11 facility to all the different classes of users that
12 the university had said. Now, maybe that was in
13 your further conversations with them, but just in
14 the letter that I looked at it wasn't clear that the
15 Remington was in full support of fully opening up
16 the facility.

17 MR. MOORE: Last question. When you
18 reached the conclusion that 11:00 seemed too late,
19 were you aware that the university hospital located
20 several blocks up the street is open 24 hours?

21 MS. MCCARTHY: Yes, I'm glad you
22 mentioned that because that was another reason why
23 we were concerned about the capacity of the nearby
24 streets to accommodate additional parking demand at
25 6:00 to 8:00, which is also a prime visiting time at

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1 the hospital.

2 MR. MOORE: Were you aware that there is
3 going to be a 700-bed dormitory across the street
4 that is open 24 hours?

5 MS. MCCARTHY: Well, or there will be a
6 700-bed dormitory this fall, yes.

7 MR. MOORE: And that the Marvin Center
8 at the university is open 24 hours?

9 MS. MCCARTHY: But the Marvin Center is
10 toward the interior of the campus.

11 MR. MOORE: And that the Gillman Library
12 is open until 2:00 a.m. in the morning?

13 MS. MCCARTHY: Which is also toward the
14 interior of the campus.

15 MR. MOORE: The point I'm trying to make
16 is that this isn't the only facility --

17 CHAIRPERSON MITTEN: You can make your
18 point on rebuttal, but if you have any other
19 questions, that would be good.

20 MR. MOORE: I have no further questions.

21 CHAIRPERSON MITTEN: Okay. Thanks.
22 Mrs. Miller, did you have any questions for the
23 Office of Planning?

24 MS. MILLER: I didn't get the report
25 until 4:00 yesterday afternoon and I've only gotten

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1 half way through it because I had a meeting last
2 night and one today. So, I'll have to cover what I
3 can in my testimony.

4 CHAIRPERSON MITTEN: Okay. Thank you.
5 Maybe you want to stay up there. I think we're
6 about ready for you. I don't think there are any
7 other Government agencies represented here tonight.
8 So, I think we're ready for the ANC report.

9 MS. MILLER: Well, we have written
10 extensively on this subject that's going on. I've
11 got four cartons at home this tall full.

12 CHAIRPERSON MITTEN: Just on the
13 wellness center?

14 MS. MILLER: On the wellness center. It
15 started in 1992 and the first one was refused. And
16 I'd like to read you from the -- I don't know
17 whether everybody got a chance to read the original
18 order.

19 Okay. It says, "Offering the use of the
20 facility to anyone who is not a student, faculty
21 member or staff person from the Foggy Bottom campus
22 such as alumni, neighbors and those from other
23 campuses will create an adverse traffic impact."
24 And it does. And right now, Virginia Avenue is so
25 jammed you cannot move on it.

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1 But the next thing is the purpose of the
2 facility is not to promote athletic uses for the
3 neighbors, alumni or anyone who is not a student,
4 faculty or staff person from the Foggy Bottom
5 campus. And of course they have been violating
6 that. And that the reason they approved it to start
7 with, because they insist it was not going to be a
8 high-intensity use. It was on the periphery of the
9 campus in the middle of a residential neighborhood.
10 And Mr. Moore keeps saying they're all approved on
11 that block. I don't think Dr. Cruiser approved of
12 it and I don't think they've offered him a
13 membership, although he's brought suit for what
14 they've done to his house.

15 I'd like to review some of the things
16 that we have turned in. And one of the things is,
17 first off, this is making a commercial use in a
18 residential neighborhood. Georgetown tried this and
19 what they did to get around the problem was they had
20 to start paying taxes on the athletic center. So
21 they might keep that in mind because GW right now
22 doesn't pay any taxes. Anything they ever make,
23 they could lose.

24 And it's supposed to be a low-intensity
25 building and that the people who testified, and he

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1 did testify, he was very upset, the one who has the
2 other health centers, that it would create a
3 problem. You can't compete with a person who
4 doesn't pay taxes when you have to pay taxes,
5 there's no way you can compete with them, and he
6 would be very upset about that.

7 And another thing was the reason we
8 haven't formed a committee is because the other
9 night you put into the record the fact that you can
10 never get an accurate count of the students and
11 they're not in compliance, not on the number of
12 students, not on the fact that they operating
13 outside of the campus without approval of the Zoning
14 Commission and I gave you all copies of the areas
15 outside of the campus where they are currently
16 operating and it shows that when you go to the
17 Internet and take a look at it, that they are moving
18 their commercial offices and everything off of the
19 campus and using the residential area. And I added
20 an addendum to it when I found out they also have
21 taken over 2100 M Street. GW uses that for an
22 administrative building. And they're supposed to
23 have approval when they do that and they haven't got
24 it.

25 And they keep wanting to reach out to

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1 us. We would just as soon they kept their hands to
2 themselves and kept their hands off of our property.
3 We're tired of this outreach they've got. They've
4 taken over 21 apartment buildings. They've taken
5 over most of my building. And let me tell you
6 something, they might want to exercise until 1:00 or
7 2:00 in the morning, but when they come home, people
8 are trying to sleep and you can't sleep. We're up
9 to 3:00 and 4:00 in the morning from students coming
10 in making noises.

11 And of course it's nice and quiet.
12 They've been limited. It's been working. What the
13 BZA first approved has worked. It has protected the
14 neighborhood. It has limited the activity and with
15 all these thousands of students that are now coming
16 in there, and there's going to be almost 1,000 more
17 students on that corner.

18 And the one thing I want to say about
19 that bus loading and unloading, you can not unload
20 and load a bus on 23rd Street. It's illegal.
21 That's a major artery and you're not supposed to do
22 it and it's being done by also commercial people
23 right now at Columbia Plaza to feed tourists that
24 are coming to town. And I brought that to the
25 attention of the DDOT and of course they've never

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1 seen an adverse impact, nor has Mr. Slade ever seen
2 an adverse impact, in particular on the hospital.
3 You should have been around when we took up the
4 hospital.

5 CHAIRPERSON MITTEN: How about the
6 wellness center?

7 MS. MILLER: I'm coming back to it.
8 They mentioned that the hospital is open 24 hours.
9 I should have brought some pictures tonight to show
10 you that they are delivering at 3:00 in the morning
11 when the Zoning Commission said they couldn't and
12 they shouldn't, not before 7:00. Now they wake up
13 the neighborhood from one end to the other.

14 And we feel that to change this would be
15 almost tantamount to changing the campus plan area.
16 Now, we've got a problem going on down there now and
17 at my meeting last night I found out they're going
18 to add an extension to keep you from keeping the
19 underpass and turning right into 24th Street. Now
20 let me show you what happens.

21 This is on G Street. Okay? When you
22 come down Virginia Avenue and can't take the
23 underpass, you come to this horrible intersection
24 and you have to make a right. You go just a quarter
25 of a block and you have to make a left. That's

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1 where your health and wellness center is. That's
2 where the square 43 and they, by the way, have four
3 violations right now in public space that I have
4 contested. That's just across from there. Okay?
5 Now one of the problems on trying to come down there
6 is the fact that they have built, and by the way,
7 they gave the Remington \$300 to dig up their parking
8 lot so they could put the underground into the
9 Square 43 dormitory, whatever they're calling that
10 thing, and then they also -- the Oddfellows, they
11 bought their old building, built them a new building
12 and gave them parking spaces. So all of these
13 people, they have essentially paid to support them
14 and we don't feel that's a very nice thing to do.

15 And I hope you had a chance to take a
16 look at what I filed on the letter that we brought
17 in the other night that our lawyer tried to get put
18 in refuting the number of students they have because
19 they're trying to say the Mount Vernon campus is
20 separate, but all the Mount Vernon campus comes down
21 to the Foggy Bottom campus. But they don't want to
22 include that 450 in their count, nor do they want to
23 include the students they have moved off campus.
24 They don't want to include that in their count.

25 I had one more point I wanted to make

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1 and I'm sorry I'm not better prepared tonight, but
2 things have been a little rough in Foggy Bottom, to
3 say the least. You think it can't get rougher, and
4 it gets rougher.

5 This is the thing I gave you all showing
6 you all of the places off campus, there are two of
7 them, that they're using, and you can find it on the
8 Internet, and they don't count those students in
9 their total. And there are two of them there, two
10 maps. I had to add an addendum because we found out
11 about the 3100 M Street. That's one and this is the
12 other one. I hope you take a look at it and see how
13 far off campus these people have gone. And I
14 understand that there's another thing coming up in
15 court, which I don't quite understand, but I called
16 a lawyer tonight to try to find what it meant and
17 it's called, I had it written down, it's --

18 CHAIRPERSON MITTEN: You want to spell
19 it?

20 MS. MILLER: If I could spell it, I
21 could say it, but my problem is -- pre-conclusion
22 order. And it's coming up on the 13th of July. And
23 my lawyer friend who had been a judge in the
24 Government, he said he'd never even heard of the
25 word. But it's coming up on the 13th of July and he

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1 understands that, and he tried to explain it to me,
2 it would mean that you couldn't change something.
3 Now my understanding was that the court had never
4 made a decision on the Howard Johnson, because
5 that's three or four blocks outside of the campus,
6 and that those other buildings that they're still
7 using, they have never been determined whether they
8 can continue to use them any more than can continue
9 to use Columbia Plaza. If you could have listened
10 to the tenants last night berate the manager for the
11 noise and the inconvenience of some of the students,
12 not all of them, some of them are very nice, but
13 some of the students are just too much and they told
14 him last night about the stomping, the smoking, the
15 things that are going on on the balconies that
16 they're not supposed to do and he's told the
17 policemen to go up there, there's not supposed to be
18 more than what's supposed to be in the apartment
19 after 10:00. Over that, out.

20 CHAIRPERSON MITTEN: Anything else about
21 the wellness center?

22 MS. MILLER: The other health clubs in
23 the area close at 10:00 and we feel 10:00 is
24 sufficient time for anybody who wants to exercise
25 and would be a good idea if these kids would study.

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1 AFTERall, they're going to be the ones running our
2 country and I would appreciate if they'd study a
3 little harder and play a little less. Thank you.

4 CHAIRPERSON MITTEN: Thank you. Any
5 questions for Mrs. Miller?

6 COMMISSIONER HILDEBRAND: Ms. Miller,
7 would you say that the current wellness and fitness
8 center is operating well, that you're pleased with
9 its level of compatibility with the neighborhood?

10 MS. MILLER: We have had no adverse
11 feeling at this point, but then that 800 dormitory
12 across the street from us hasn't opened and they're
13 in violation of public space on the back, the front
14 and the 23rd Street side. But it has worked our
15 reasonably well, because as he said, it's not a
16 major use and it's not supposed to be a major use,
17 which is what they're trying to turn it into.

18 COMMISSIONER HILDEBRAND: Were you
19 surprised also to hear that such a high percentage,
20 almost one would consider a vast majority, of the
21 Mount Vernon campus students are using the wellness
22 center today?

23 MS. MILLER: No, we've been trying to
24 tell you all that all along. They're down there all
25 the time and those buses, the air in Foggy Bottom is

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1 worse than any other area in the city because of the
2 population from cars, because it's a parking lot
3 now. 23rd Street is a parking lot and Virginia
4 Avenue is a parking lot.

5 COMMISSIONER HILDEBRAND: But would you
6 say it's fair to say that with the current
7 population of the wellness center there's no adverse
8 impact on the community?

9 MS. MILLER: Not at this time. But then
10 the dormitory hasn't opened and there's been some
11 impact from the 250 student that are in
12 fraternities.

13 COMMISSIONER HILDEBRAND: Okay. Thank
14 you, Ms. Miller.

15 CHAIRPERSON MITTEN: Anyone else have
16 questions?

17 VICE-CHAIR HOOD: Madam Chair, I just
18 wanted to comment on something Ms. Miller said. She
19 mentioned that she would hope that the university
20 would keep their hands to themselves.

21 But let me just say this, Ms. Miller, I
22 believe it would be, because I think we mentioned
23 this or we were reminded of this once before about
24 the community not coming up and willing to meet with
25 the university, I would insist it and I would hope

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1 that the community would try to do that, try to
2 mitigate in some of the issues that you bring in
3 here today, hopefully, I know this was going on for
4 a long time, some of those issues may be resolved
5 before you get here. I'm not saying you're going to
6 resolve all of them, but some of them can be
7 resolved hopefully when you get here. Sometimes
8 it's better for those who are impacted and involved
9 to try to satisfy and make those decisions and come
10 to some type of resolution as opposed to four or
11 five people who just go by what we're hearing as
12 opposed to those who are directly impacted. So I
13 would encourage the community and I know you are a
14 hard worker out there in that area and especially
15 with your ANC, but I would encourage you all to try
16 to get together and get to the table and let's
17 mitigate some of these issues.

18 MS. MILLER: I'd like to bring to your
19 attention, we did try for six solid months and got
20 nowhere. We tried private meetings for luncheon,
21 got nowhere. All we heard about was how terrific
22 they were, how wonderful they were. And then they
23 try to make arrangements behind our back with the
24 person we had hired to be our traffic person. We
25 did try.

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1 VICE-CHAIR HOOD: Let me just ask you
2 this, would you have a problem if the expanded use
3 of the wellness center included the Trustees, the
4 Board?

5 MS. MILLER: Absolutely. They can
6 afford to pay their own. And on top of that, the
7 President's Club has not been very successful either
8 because they've opened up it up to students now and
9 are selling students wine and beer. For your
10 information.

11 VICE-CHAIR HOOD: Okay. Thank you.

12 CHAIRPERSON MITTEN: Mr. Moore, did you
13 have any questions?

14 MR. MOORE: No.

15 CHAIRPERSON MITTEN: Thank you. Thank
16 you, Mrs. Miller.

17 All right. Now we'll take persons in
18 support. Any persons in support, just come and have
19 a seat at the table. Anyone else?

20 MS. JACKLES: Hello. My name is Cynthia
21 Jackles. I live at 2450 Virginia Avenue N.W. and I
22 brought to Mr. Bastida my proposal for an additional
23 100 Foggy Bottom residents. Did you all get a copy
24 of it?

25 CHAIRPERSON MITTEN: Yes.

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1 MS. JACKLES: Does everyone have it?

2 CHAIRPERSON MITTEN: Yes.

3 MS. JACKLES: Okay. I'm involved in a
4 group of people called Friends and we meet with GW
5 monthly to talk about noise and issues and to work
6 together. So there is a faction of the community
7 that is in favor of GW.

8 As my letter said, I moved in 1999 to
9 Foggy Bottom as an alum to take advantage of the
10 resources of GW. And while I can exercise my mind
11 by taking classes, I can't exercise my body and that
12 just doesn't make sense in this day and age. You
13 know, the theory that the overall, you know,
14 wellness of a person is many things.

15 So I'm proposing that 100 additional
16 members of the community on a first-come-first-serve
17 basis be allowed to use the facility. I live a
18 block away and I don't see why as an alum -- I don't
19 own a car and I don't see why some of us who want to
20 use it and want to pay should be precluded. I am a
21 public servant. I work for Washington Metro Area
22 Transit Authority and I can't afford L.A. Sports
23 Club or the Watergate. Sure, I'd love to go there,
24 but the reality is I have this wonderful facility
25 across the street and there's quibbling about 13

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1 percent usage. It's amazing. I would think that a
2 facility, whether commercial or university, if it
3 only gets 13 percent usage, it's kind of a waste of
4 resources. So I feel there's a community that
5 really, you know, could use this facility.

6 And also, the late hours, students can
7 congregate on the street corner anywhere and make
8 noise. To allow them to exercise to late hours gets
9 rid of stress. So I would think they would be
10 quieter when they came home rather than, you know,
11 coming and talking in their apartment say at 11:00
12 at night. Perhaps they have another place to go.
13 They can't go to the bars like we could at 18 and
14 drink, so why not give them hours of health
15 facility.

16 So, I also feel that the classes, the
17 first three classes that were proposed that didn't
18 talk about the rest of us in the close proximity and
19 who are alums as well, School Without Walls will
20 probably not impact the 6:00 to 8:00. Those kids
21 are going to go from 3:00 to 5:00 and go home for
22 dinner. When you think of Saint Mary's, the Section
23 202 housing, a lot of the elderly aren't going to
24 exercise, but hopefully at some point GW Will get
25 its exercise programs, its exercise science and

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1 medical things together and make real programs.
2 They're not going to use the machines by and large.
3 And I also feel the Remington isn't going to have
4 much an impact on it as well and the Oddfellows who
5 don't live in the neighborhood, I don't think that's
6 going to be much of an impact. So I feel that this
7 extra 100 people is really of a value to a lot of
8 people who could take advantage and are not being
9 considered at this point.

10 CHAIRPERSON MITTEN: Thank you. Any
11 questions for Ms. Jackles?

12 COMMISSIONER HILDEBRAND: I'm sorry. I
13 didn't catch your name at the beginning.

14 MS. JACKLES: Cynthia Jackles. I have a
15 letter dated May 10th that I submitted to --

16 COMMISSIONER HILDEBRAND: I'm sure I
17 have it here.

18 CHAIRPERSON MITTEN: It came in our
19 supplemental.

20 COMMISSIONER HILDEBRAND: I'm sure I
21 have it here, but are there any other exercise
22 facilities on the campus that you are allowed to
23 use?

24 MS. JACKLES: There is nothing else --
25 well, they've converted the Smith Center to more

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1 intercollegiate practices, so that's really been
2 limited. So no, there's no other facility for us to
3 use. And so for alums to be precluded from using
4 this, those of us who can walk, it just doesn't make
5 sense. No, there are no other facilities.

6 COMMISSIONER HILDEBRAND: So if you were
7 to join the President's Club, you wouldn't be able
8 to use the Smith Center?

9 MS. JACKLES: I don't have the money to
10 join the President's Club, just like I don't have
11 the money to go to the L.A. Sports Club. I
12 volunteer with a couple of scholarship
13 organizations. I've been involved in the Elliot
14 School. I've been involved in other ways in the
15 university, but not as a monetary donor.

16 COMMISSIONER HILDEBRAND: Thank you.

17 CHAIRPERSON MITTEN: Anyone else have
18 questions? Mr. Moore? Mr. Hood has a question.

19 VICE-CHAIR HOOD: I understand that you
20 want to extend the 100 additional members, but I'm
21 still have an issue, and I brought this up with Mr.
22 Barber, how actually do we see this working because
23 if I'm not in that 100, and I understand exactly
24 where you're coming from, but if I'm not in that 100
25 and I live in the neighborhood, then I have a

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1 problem.

2 MS. JACKLES: That's because there's a
3 limit here. You're looking to limit it, so I came
4 up with a number that sounded reasonable so that
5 this class would be included. Sure, we'd like to
6 open it to more people and I would use it on the
7 weekends when it's hardly used and I probably would
8 take advantage of the exercise classes which may be
9 students don't take advantage of, but you know, I'm
10 not the expert on the numbers, but sure, if we could
11 open it to more, maybe more people would want to use
12 it. But it would be on a first-come-first-serve
13 basis. I don't know how GW would promote it. They
14 would tell this group that's active in trying to
15 come up with some community projects or how they
16 would advertise in the local paper. I don't know.
17 But I guess it would have to be first-come-first-
18 serve. I mean, it's the city's limit. It's not
19 mine. I would extend it.

20 VICE-CHAIR HOOD: Speaking of that, and
21 I appreciate, I'm glad somebody is meeting with the
22 university, but this Commission is bound by giving
23 the ANC great weight and that's not just in this
24 case, that's across the board.

25 But there's something else you mentioned

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1 and I'm not trying to belabor the point, but there's
2 another way when you look at things. I also run in
3 the morning. After I get through running, I'm hyped
4 up for the next four or five hours. And your
5 statement that if we let it stay open until 1:00,
6 then it will be less intense. But I don't know
7 about anybody else, but once -- let me finish --
8 once I exercise, I'm ready for the next four or five
9 hours. But I'm sure it would take me four or five
10 hours to wind down if I left out of GW at 1:00.

11 MS. JACKLES: Everybody's different.
12 When I come out of an exercise class with some
13 girlfriends, they're starving to death and I'm not.
14 So I think every human being reacts to exercise in a
15 different way. I'm really calmer, takes away the
16 stress and it calms me down. So, I think --

17 VICE-CHAIR HOOD: You satisfied the
18 discussion. Thank you. You said exactly what I
19 wanted to hear. Thank you. Because your first
20 initial statement was that they wouldn't be as
21 stressed and they would be tired. So you answered
22 the point I was trying to make. Thank you.

23 MS. JACKLES: One is calmer.

24 VICE-CHAIR HOOD: We're good. We're
25 good.

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1 CHAIRPERSON MITTEN: Thank you. Anyone
2 else in support?

3 (No audible response.)

4 CHAIRPERSON MITTEN: All right. Any
5 organizations or persons in opposition that would
6 like to testify? Anyone else in opposition, now's
7 the time to take a seat at the table. Okay.

8 MS. SPILLINGER: Good evening. My name
9 is Barbara Spillinger and I am vice-chairman of the
10 Foggy Bottom Association and a former chairman of
11 ANC 2-A.

12 I hadn't planned to testify this
13 evening, but since I've been sitting here through
14 all of this, I thought I would just like to make a
15 couple of comments.

16 The Foggy Bottom Association submitted a
17 letter on November 25, 2002, I testified on December
18 2, 2002 and we also submitted a letter February 18,
19 2004, all of which I believe have been distributed
20 to the members and you've had an opportunity to see
21 them.

22 One of the things that bothers me about
23 this issue is the way it has come about. When it
24 was first proposed, the community insisted that the
25 building was too large and that being built for

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1 student use well into the evening hours should be
2 placed in the interior of the campus, rather than on
3 the periphery. It argued that this site was far
4 better suited for dormitory use which would house a
5 specific number of students, rather than be
6 available to the entire student body. But, we did
7 not prevail and the health and wellness center was
8 built where it is, near the residential community.

9 And the fact now that the university
10 says it is under-utilized and they want to expand it
11 and open it up is just another example of the
12 university's consistent habit of saying one thing to
13 gain initial approval of a project and then
14 attempting to change the ground rules to fit its
15 overall, but not previously-enunciated position.
16 And it's one of the things that has happened over
17 and over again in the community and we find
18 particularly disturbing.

19 The second comment I would like to make
20 is that there are other sport centers in the area.
21 Yes, some of them are expensive, more so than
22 others. But if this sports center is opened up to a
23 larger group of people, you're putting a non-profit
24 tax-supported sports center into competition with
25 like taxpaying businesses and I think you should

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1 keep that factor in mind.

2 And I want to correct one thing that Ms.
3 Miller said. When she said that the President's
4 Club was opened up to students now, she was thinking
5 of the University Club and not the President's Club,
6 which is a different institution.

7 CHAIRPERSON MITTEN: Thank you.

8 MS. SPILLINGER: And I saw Mr. Barber
9 shaking his head about wine and beer to students.
10 I'd be pleased to answer any questions you might
11 have.

12 CHAIRPERSON MITTEN: Thank you. Any
13 questions for Mrs. Spillinger? Any questions? Mr.
14 Jeffries?

15 COMMISSIONER JEFFRIES: Yes, actually I
16 have a question.

17 MS. SPILLINGER: Yes.

18 COMMISSIONER JEFFRIES: What would you
19 say about an organization, you know, having the
20 right to sort of revisit, you know, sort of demand
21 issues around particular operations and so forth? I
22 mean, let's say two years ago the market said one
23 thing and so therefore you sort of reflected that in
24 your operations and then two years later you're at a
25 different place. I mean, in your estimation is it

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1 possible for an institution to sort of reconsider?

2 MS. SPILLINGER: Well, obviously things,
3 basic factors do change.

4 COMMISSIONER JEFFRIES: Yes.

5 MS. SPILLINGER: And changes have to be
6 taken into consideration.

7 COMMISSIONER JEFFRIES: Okay.

8 CHAIRPERSON MITTEN: Mr. Moore, any
9 questions?

10 MR. MOORE: (No audible response.)

11 CHAIRPERSON MITTEN: All right. Thank
12 you, Mrs. Spillinger.

13 MS. SPILLINGER: Thank you.

14 CHAIRPERSON MITTEN: Good to see you.
15 Okay. Now would you like to do any rebuttal?

16 MR. MOORE: Yes. The intent is not to
17 be long, but there are a couple of issues that arose
18 during some of the cross examination and some of the
19 direct testimony that we feel we need to address.

20 First, Mr. Barber, I think that Ms.
21 Miller made just one allegation and we'll respond to
22 it and that's that the university paid people to
23 support them. Is that true?

24 MR. BARBER: No, that's not true. If I
25 may, I'm not going to respond to all of the

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1 allegations, but when there's an allegation of
2 wrongdoing and bad faith, I think I have to respond.
3 In fact, the allegation that we paid people to
4 support this project is simply not true.

5 Remington people, as recently as this
6 week, have been coming to me to support this project
7 and, Ms. McCarthy, I take issue with you, they
8 supported the application and that was clear in
9 their testimony.

10 Changing. You know, the idea that we
11 came to the Commission to get it built under one
12 premise in order to change it later, we always had
13 this vision for this project. The reason why it was
14 limited by the Board of Zoning Adjustment on their
15 view allegations of traffic impact and we don't
16 think that's borne out. We don't think it has any
17 validity. But I think we need to keep our eye on
18 the ball of what the objection will impact its claim
19 is traffic and we think we can address that issue.
20 But this vision is always what we had for this
21 project.

22 And let me go to the President's Club.
23 The President's Club is not cheap. It's \$1,000
24 membership and \$700 a month. And so it's for people
25 who want to pay for certain amenities. But people

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1 who can afford to do that, as Ms. McCarthy said, can
2 go anywhere. But I think that supports our
3 position. The only people who are likely to do it
4 are people who already have or are developing a
5 relationship with the university, people who are
6 coming here, people like the Board of Trustees,
7 people who believe in university and already have a
8 vested interest. If they don't have that interest
9 in university, are not already coming here, chances
10 are they'll take their money and they have plenty of
11 options in the city and plenty of options all over
12 the region. So I think because of the way we've
13 structured it and the limited number, I think the
14 President's Club is clearly within a reasonably-
15 defined group of people that the university should
16 be interacting with. We think we've fully address
17 the traffic impact, which again I think is a key
18 issue. Even the Office of Planning says it's
19 marginal and I will let Ms. White address that.
20 I'll leave it at that. Thank you.

21 MR. MOORE: Ms. White, Ms. McCarthy and
22 the Office of Planning don't believe Grove Slade's
23 report. At least they don't give credit to Grove
24 Slade's conclusions, or the conclusions of
25 Brailsford & Dunleavy or its own Department of

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1 Transportation. Would you just speak to the issue
2 of the President's Club and guests of the university
3 and the parking and traffic impact that that would
4 have?

5 MS. WHITE: Sure. Mr. Moore, I'm sorry,
6 but I'm going to have to take a step back to the
7 campus plan for just a second and try to remember
8 some of the analyses that we did at that time.

9 What we found back in 2000 was that the
10 university represents roughly 20 percent of the
11 traffic in the general vicinity of the campus, going
12 through the campus. So although this is great that
13 the university is in the midst of a downtown urban
14 setting, it also can be viewed negatively by the
15 neighbors and people who don't understand, they
16 associate the regional traffic problems in the area
17 with the university and that's, you know, really not
18 a fair situation. I just wanted to talk regionally
19 for a second.

20 And now let me address the specific
21 issues about adverse impact. There are, I think we
22 said the number of 270 President's Club members and
23 what we did from our survey is we found, what I said
24 is people do not go to the gym every day. So that
25 means that of that 270, we're saying that only 30

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1 percent of those people would be there on any given
2 day. And this is ever higher than the Brailsford &
3 Dunleavy number of 25 percent. So roughly a third
4 of that 270 will be there on any given day. So
5 we're talking about 90 people in a day. Now we also
6 did our survey and we found that only 18 percent of
7 that 90 drive. The rest come by transit, they walk,
8 they're at the university for some other business.
9 So if we look at 18 percent of that 90, that's 18
10 per day. So I want to back our numbers here with
11 this simple math in front of us all here. Eighteen
12 per day. That's distributed throughout the day, so
13 that's where we came up with that nine in an hour.

14 Now 18 per day, there are 80,000
15 vehicles that go through that campus on a daily
16 basis. You can count traffic from now until every
17 day next year and you will have a variance of
18 traffic greater than 18 vehicles per day. When
19 you're talking about 80,000 vehicles, you cannot
20 feel 18 vehicles a day. That's what is meant by
21 adverse impacts. And when we strongly say that you
22 do not feel the impacts of this project, that's what
23 we mean by no adverse impact. Thanks.

24 MR. BARBER: And I'm sorry, one other
25 comment. If you think it's appropriate in terms of

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1 the President's Club members, the university would
2 be willing to offer as part of the package for their
3 membership, a discount to the university parking
4 garage to act as an incentive to park in the
5 university parking garage. We don't think the
6 numbers will be that big, but again, if there's
7 concern about them parking on the streets, we would
8 be willing to add that discount as part of their
9 membership package to further address that issue.
10 Again, we've heard, we know it's not a huge issue,
11 but if there's lingering concern, we'd be willing to
12 put that on the table.

13 MR. MOORE: Questions that the
14 Commission might have?

15 COMMISSIONER HILDEBRAND: What was the
16 level of traffic service through those intersections
17 today? Was is its functioning capacity? Is it
18 really effective, or is it congested and poorly
19 performing?

20 MS. WHITE: Well, like I said, the first
21 part, when we look at a traffic analysis like this
22 for an existing facility, one where you're just
23 changing the operations, is we want to understand
24 the level of magnitude and so since we saw such a
25 small level of magnitude, we didn't feel it was

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1 necessary, and DDOT certainly agreed, to do what we
2 would typically do, to go out and do a traffic
3 analysis, a level of service analysis of each of the
4 intersections just because the level of magnitude is
5 so small.

6 Now to answer your question, from time
7 to time, yes, there is traffic congestion. I can
8 not dispute that. There are intersections that
9 operate at level of service D, if I can remember,
10 because I've been working with the university for
11 probably seven years on all of their cases, some
12 that operate at level of service D, which is
13 acceptable to DDOT. Some at lower levels. Some at
14 E, some at failing from time to time and it varies,
15 but the bottom line is that this order of magnitude
16 is too small to be realized.

17 COMMISSIONER HILDEBRAND: And the other
18 question I had and this is for George Washington
19 University, if you find that the President's Club is
20 not a successful package to get enough members even
21 with this membership offer to the health club, would
22 you look at possibly in the future changing the
23 requirements for the President's Club, the criteria
24 of joining the President's Club if you find it's not
25 a successful business venture? Do you see a time at

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1 which you might lower it so perhaps the fees aren't
2 so high and still offer the same amenity?

3 MR. BARBER: Certainly. Certainly in
4 operating a facility like this, we would take a look
5 at our operational procedures from time to time to
6 see if they work well. And if the question is the
7 fee that we've set written in stone so it won't be
8 changed, no. We certainly would take a look at it
9 from time to time. I think the fee is less
10 important to us than the service it provides, the
11 outreach which we're trying to achieve. We don't
12 have to have, you know, 270 members. You know, we
13 have a capacity for 270 and I think we should be
14 allowed to go up to 270, but I don't think the
15 university is going to be overly concerned that, you
16 know, it's 250 and we have 270 members. So, what we
17 want to do is be able to reach the people who are
18 friends and supporters through that membership and
19 we think that number, that it can accommodate up to
20 270 is not going to be a significant number given
21 who's already there and given the 145 that are
22 additional.

23 So, I hope I've answered your question.
24 You know, we'll take a look at that fee, as well as
25 other parameters of the operation. We will manage

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1 it for a couple of reasons. We want to make sure
2 that our students, that are our primary concern,
3 have full access. But we don't envision the
4 President's Club impacting that. But also whether
5 we're reaching the kind of outreach to the kind of
6 supporters that we want to reach. Yes, we would
7 look at that from time to time. Did I answer your
8 question?

9 COMMISSIONER HILDEBRAND: Yes, I think
10 so. I think I was focused more on changing the
11 business strategy and what if in the future the
12 definition of the President's Club becomes something
13 much less substantial and more people were
14 interested in being a member at that level. But I
15 think having a cap structure of a certain number at
16 least prohibits it from going beyond that.

17 MR. BARBER: oh, yes. Yes. the
18 physical capacity of the layout, the locker rooms
19 that, you know, provide the amenities, there are
20 separate locker rooms, you have your own locker,
21 etcetera, etcetera, don't permit any amount over 270
22 as a maximum.

23 COMMISSIONER HILDEBRAND: Who did you
24 envision using this if the original construction
25 agreement prohibited alumni and President's Club

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1 members from having access to this space? Why did
2 you build such a large facility for them?

3 MR. BARBER: The 270 we didn't view as
4 particularly large, but two reasons. One, as we
5 said from the beginning, our view of this was to
6 ultimately to realize what the original goal was, to
7 have a facility that served the community in a
8 broader sense, the university community in a broad
9 sense and we always thought it should include these
10 other parties. We recognize the order that limited
11 it to students, faculty and staff and we have made
12 some usage. We had hoped that we could show through
13 time that the practice of what's happened to date
14 has not caused any objectionable impact and that we
15 would be able to come back to this Commission to
16 show that a broader usage of the President's Club
17 would also not create an objectionable impact.

18 COMMISSIONER HILDEBRAND: Am I
19 understanding correctly that you're changing the use
20 of the Smith Center to be an intercollegiate
21 facility and moving all of your fitness component
22 out of the Smith Center and into this health and
23 fitness or wellness center?

24 MR. BARBER: Yes.

25 COMMISSIONER HILDEBRAND: Why are you

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1 electing to move the squash courts then from the
2 Smith to -- which their function is intercollegiate?

3 MR. VECCHIONE: The squash courts in the
4 Smith Center are not regulation. They're American
5 squash courts, not international squash courts.
6 International squash courts are a lot larger,
7 they're wider, etcetera. So that's why we wanted to
8 move the squash team or, you know, generate the
9 squash team so that it can play at the health and
10 wellness center. We wouldn't be able to remodel the
11 Smith Center in order to accommodate that.

12 COMMISSIONER HILDEBRAND: Thank you.

13 CHAIRPERSON MITTEN: Any other
14 questions? Mrs. Miller, did you have any questions
15 on the rebuttal testimony? You don't have to. You
16 could just stay right there, relaxed in your chair.

17 MS. MILLER: You were talking about the
18 traffic in that area, she was, and about DDOT. They
19 have never seen an adverse impact. Okay?

20 CHAIRPERSON MITTEN: What's the
21 question?

22 MS. MILLER: The question is, the
23 traffic impact in that area are all the
24 intersections operating at F level. Are you aware
25 of that?

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1 MS. WHITE: No.

2 MS. MILLER: They all operate at F
3 level. If you don't believe me, ask DDOT.

4 CHAIRPERSON MITTEN: Okay. Thank you.
5 Anything else?

6 MR. MOORE: Well, Madam Chair, it's five
7 minutes to 9:00. By my account, we'll be out of
8 here at 9:00 if you just give me a few moments for a
9 closing statement.

10 CHAIRPERSON MITTEN: Sure, if you
11 promise that you'll be done by 9:00, that would be
12 great.

13 MR. MOORE: Absolutely. Absolutely.
14 Madam Chairperson, members of the Commission, we
15 thank you for your time and close attention to our
16 presentation.

17 The evidence or record shows that the
18 university's mission with respect to the center is
19 to serve the entire community, not just students,
20 but the entire community in which it is located.
21 That is the position that the university took in
22 1998, that is the position the university took in
23 2002 and that is the position it takes today. That
24 includes students, faculty, staff, its Board of
25 Trustees, important friends of the university,

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1 parents and guests of students, faculty and staff
2 and the people who live in the university's
3 community. That has always been the purpose for
4 which this and other university facilities are
5 created.

6 For the Office of Planning to suggest
7 otherwise, very respectfully, is just wrong. Wrong
8 for it to presume to speak for the university in
9 determining the intended uses and policies of the
10 center and wrong for it repeat the erroneous
11 presumption to the Commission.

12 The correct for this special exception
13 is whether the proposed use, as revised, will become
14 objectionable to neighboring property because of
15 noise, traffic, number of students or other
16 objectionable conditions. The evidence shows that
17 all of the neighboring property owners except the
18 Oddfellows have submitted supporting statements into
19 the record. The Oddfellows of course has not
20 submitted a statement in support or opposition, but
21 the university has said that that organization is
22 willing to accept memberships that the university
23 has proposed to make available if this application
24 is approved. In addition, many of the owners and
25 residents of neighboring properties have submitted

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1 statements of support.

2 With respect to noise, the university
3 has testified under oath that it has received no
4 complaints from anyone with respect to noise at any
5 hour of the day or evening, or on any day of the
6 week. There is no evidence in the record submitted
7 by anyone that would support a finding to the
8 contrary. That fact closes the issue and supports
9 both ends of the university's request to increase
10 the memberships at the center and to set the closing
11 hour at 1:00 a.m. on all days. There is no evidence
12 in the record that either action will adversely
13 affect the use of neighboring property because of
14 noise.

15 You've heard the record reports and
16 testimonies of the university's expert traffic
17 consultant, which has conducted studies of the
18 current usage at the center at all hours of the day
19 and the evening and all days of the week. Its
20 studies conclude that the center's membership can be
21 increased by 3,000 without having an adverse impact
22 on traffic or parking and a second study made in
23 conjunction with the university's revised request,
24 Grove Slade logically found that increasing the
25 membership by the lesser number of 1,316 would also

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1 have no adverse traffic impact.

2 Adding to the wealth of evidence, the
3 D.C. Department of Transportation concurs with Grove
4 Slade and recommends that the membership of the
5 center be expanded as proposed by the university,
6 plain and simple, black and white.

7 With respect to the closing hour, the
8 D.C. Department of Transportation concurs with the
9 Office of Planning that an 11:30 p.m. closing is
10 fair enough. But neither agency says why. The D.C.
11 Department of Transportation does say that extending
12 the closing hour to 1:00 a.m. could have adverse
13 impacts, but it doesn't identify them. At the same
14 time, counter-intuitively it says that there is
15 little traffic and much parking at night. So the
16 D.C. Department of Transportation must be referring
17 to some other objectionable condition, but it
18 doesn't say which, leaving that part of the
19 Department of Transportation recommendation without
20 support in the record.

21 On the other hand, the university has
22 submitted reports from Grove Slade and by its
23 facility's planning consultant Brailsford & Dunleavy
24 that comprehensively examined the justifications and
25 impact of a later closing hour and give reasons

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1 supporting their conclusions that a later closing
2 hour will not adversely affect the use of
3 neighboring property because of noise, traffic,
4 number of students or other objectionable
5 conditions. As to the impact of an increased number
6 of persons using the center, the university's expert
7 traffic consultants, the D.C. Department of
8 Transportation and the Office of Planning have
9 concluded that an increase of 3,000 memberships
10 would have a negligible impact on traffic, parking
11 and neighboring property due to the relatively small
12 increase in memberships and limited automobile
13 usage.

14 Each report and testimony of course logically
15 supports a lesser number of users at the center.
16 The Office of Planning offers no findings of a basic
17 or underlying nature explaining how a small increase
18 in the President's Club members and weekend guests
19 of the university would adversely affect neighboring
20 properties. How is it, for instance, that 3,000 new
21 members is okay and 1,300 is not when both have been
22 documented to be without traffic impact? That is
23 sufficient reason to reject the Office of Planning's
24 recommendation to limit the scope of memberships, a
25 recommendation that may be based on politics rather

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1 than zoning and in any event is totally and
2 rightfully distinguishable and unrelated to the land
3 use issue that is before this Commission.

4 Finally, we have consistently emphasized
5 on this record that the university's belief that the
6 proper measure of zoning impact should be related to
7 the number of the users and not the classes of
8 users. However, we have separated the university's
9 proposed numbers into classes at the request of the
10 Commission and to provide structure for the parking
11 and traffic analyses. However, the bottom line is
12 that there is no zoning reason, no zoning reason
13 related to traffic, parking or number of students
14 that memberships in the Lerner Health and Wellness
15 Center should not be available to others as
16 proposed. There is a wealth of evidence in the
17 record supplied by experts that is unrebutted to
18 support such a finding and conclusion. In these
19 circumstances, the application for special exception
20 relief must normally be approved.

21 Thank you for listening and for your
22 fair consideration of the record evidence. It is
23 9:00.

24 CHAIRPERSON MITTEN: Thank you, Mr.
25 Moore.

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1 UNIDENTIFIED SPEAKER: I object to one
2 of his statements.

3 CHAIRPERSON MITTEN: Well, you'll have
4 to tell him outside.

5 Mr. Bastida, we had a request for one or
6 two pieces of information, I think?

7 MR. BASTIDA: That is correct, Madam
8 Chairman. I think that you requested projection of
9 the number of users after new dormitories are built?

10 CHAIRPERSON MITTEN: That was Mr.
11 Hildebrand asked for that.

12 MR. BASTIDA: And there were some
13 questions about the compliance of the university
14 with Condition 10.

15 CHAIRPERSON MITTEN: I believe Mr.
16 Barber handled that.

17 MR. BASTIDA: Right. You didn't want
18 any further --

19 CHAIRPERSON MITTEN: I don't know if
20 there's anything else to say.

21 MR. BASTIDA: So there is only then that
22 item.

23 CHAIRPERSON MITTEN: Okay.

24 MR. BASTIDA: When does the university
25 believe that they can provide that information on

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1 the conclusion of facts, I mean the finding of facts
2 and conclusion of law and when does the ANC could
3 present findings of facts and conclusion of law?

4 MR. MOORE: Ten days.

5 MS. MILLER: I would like a month.

6 MR. MOORE: For us to produce documents?

7 MS. MILLER: No, his document, the
8 finding of facts and conclusion of law.

9 CHAIRPERSON MITTEN: What did you say?
10 How many --

11 MS. MILLER: I suggested that we should
12 have a month and the reason I'm suggesting is
13 because we have got four cases coming up.

14 CHAIRPERSON MITTEN: I don't think
15 you'll have a month.

16 MS. MILLER: Well, I think we need it.

17 CHAIRPERSON MITTEN: But I think it's
18 not reasonable in the context of an individual case.

19 MS. MILLER: It is considering the
20 number of cases we've got coming up and the number
21 that we have had. I mean, we're such a little body.
22 We don't have help. We don't have lawyers. And we
23 don't have money.

24 CHAIRPERSON MITTEN: I understand that.

25 MS. MILLER: We have to do all the work

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1 ourselves.

2 CHAIRPERSON MITTEN: Right. And I
3 understand that.

4 MS. MILLER: Minimum of three weeks.

5 CHAIRPERSON MITTEN: I think three weeks
6 will work. Three weeks will work.

7 MS. MILLER: Prefer a month.

8 MR. BASTIDA: Then the university will
9 present the request for the further information on
10 -- can you do that by Friday, May the 21st and serve
11 it to the ANC?

12 MR. BARBER: Is that with the findings
13 of fact?

14 MR. BASTIDA: No.

15 MR. BARBER: Just the request for
16 information?

17 MR. BASTIDA: Right.

18 MR. BARBER: All right.

19 MR. BASTIDA: Yes, and that would be
20 served on the ANC and this office by 3:00 on Friday
21 the 21st. And then you will serve the findings of
22 fact and conclusion of law on the ANC by Friday,
23 June 4th at 3:00. Today's the 13th.

24 CHAIRPERSON MITTEN: Is June 4th three
25 weeks?

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1 MR. BASTIDA: Yes.

2 CHAIRPERSON MITTEN: Okay. Three weeks
3 is June 4th.

4 MR. BASTIDA: That's slightly over three
5 weeks.

6 CHAIRPERSON MITTEN: Okay.

7 MS. MILLER: Slightly over two, but not
8 three?

9 MR. BASTIDA: No, it is one, two, three.
10 It is slightly -- if it will be the 14th, then it
11 will be three weeks exactly. Today Thursday.

12 MS. MILLER: All right. The 14th would
13 be better.

14 MR. BASTIDA: No, I'm saying if today is
15 the --

16 MS. MILLER: It's practically the 14th.

17 CHAIRPERSON MITTEN: Well, then it's
18 practically three weeks.

19 MR. BASTIDA: It's over three, yes.
20 Okay?

21 MS. MILLER: We have to have those
22 findings of fact in when?

23 CHAIRPERSON MITTEN: June 4th.

24 MR. BASTIDA: By the 4th at 3:00. And
25 at that time, you also could have the response to

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1 the submission that the university is going to
2 produce by the 21st of May and serve on you. So
3 that gives you two weeks for that for that.

4 CHAIRPERSON MITTEN: And just keep in
5 mind, I mean, you're not compelled to do findings of
6 fact and conclusions of law.

7 MS. MILLER: We understand.

8 CHAIRPERSON MITTEN: You're invited to.

9 MS. MILLER: We understand the problem,
10 but every little bit helps because if you don't
11 clarify the issues, they get --

12 CHAIRPERSON MITTEN: Okay.

13 MR. BASTIDA: Thank you, Madam Chairman.

14 CHAIRPERSON MITTEN: Okay. So
15 everyone's clear on the dates for submission and
16 then we will make our decision at one of our regular
17 meetings.

18 MR. MOORE: Could you be so kind as to
19 project a date? If all the information is on by
20 Friday, June the 4th, when would the Commission
21 first be able to decide this case? It was filed in
22 April of 2002.

23 MR. BASTIDA: The first opportunity will
24 be --

25 CHAIRPERSON MITTEN: Well, there's been

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1 stuff going on.

2 MR. BASTIDA: The first opportunity will
3 be on the June meeting.

4 MR. MOORE: Which day is that, Mr.
5 Bastida, please?

6 MR. BASTIDA: That would be the 14th of
7 June.

8 MS. MCCARTHY: Madam Chair?

9 CHAIRPERSON MITTEN: What? We don't
10 make promises.

11 MR. BASTIDA: I mean, it's the norm of
12 the Commission to say at one of the regular
13 scheduled meetings. That's the first one. The
14 Commission do not commit themselves to take it
15 anything and date.

16 MR. MOORE: Thank you.

17 MR. BASTIDA: You know that.

18 CHAIRPERSON MITTEN: Yes, what he said.
19 That's right. Okay? But if you're interested in
20 finding out what's on the agenda for our meeting,
21 feel free to call Mr. Bastida about a week prior and
22 see what's happening.

23 And I'd like to thank you all for
24 bearing with us tonight and being patient with our
25 questions and all that good stuff. So, have a good

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1 evening. Thank you.

2 (The meeting was adjourned at 9:07 p.m.)

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